

PUBLIC HEARING ON
PROPOSED REVISION TO
MISSOURI STATE IMPLEMENTATION PLAN –
DOE RUN HERCULANEUM, MODIFICATION TO CONSENT JUDGEMENT

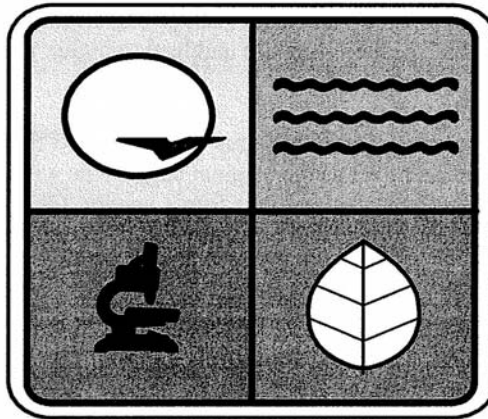
The Missouri Department of Natural Resources' Air Pollution Control Program is proposing to amend the Missouri State Implementation Plan (SIP). This proposed change to the SIP will modify the Doe Run Herculaneum smelter Consent Judgement to replace the current teflon membrane filter bags used in the air pollution control equipment with spun-bound filter pleated elements. If the commission adopts this minor plan action, it will be the department's intention to submit this revision to the U.S. Environmental Protection Agency.

Missouri State Implementation Plan

Doe Run Herculaneum

Modification to Consent Judgement

Public Hearing — June 30, 2005



Department of Natural Resources
Air and Land Protection Division

Air Pollution Control Program
P.O. Box 176
Jefferson City, Missouri 65102
Telephone: (573) 751-4817

Doe Run Herculaneum State Implementation Plan (SIP) Revision

This document is intended to serve as a revision to the existing lead SIP (January 2001 revision) for the Herculaneum, Missouri, nonattainment area. The Doe Run Company would like to replace the current teflon membrane bags used for air filtration as specified in Section 2.A. 1.c of the existing January 2001 SIP revision.

One of the elements that makes the January 2001 SIP revision enforceable is the Consent Judgement. This document specifically requires the use of “teflon membrane filter bags”. This phrase was included in the Consent Judgement because this was the type of material that Doe Run was specifying at the time. The #9 baghouse services the building air from the refinery building and it was designed and installed with a very high air-to-cloth ratio justified by the very low expected amount of dust and fume collected. This design, however, resulted in other operational issues such as bag cleaning and high operating pressure differentials which reduced bag life and led to higher maintenance and energy consumption costs.

The bags that Doe Run plans to install are spun-bound pleated filter elements that have approximately twice the filter area as the original bags. This will significantly reduce the air-to-cloth ratios improving the design. Doe Run’s vendor, GE Energy, has assured Doe Run in writing that the pleated bags will meet the Total Suspended Particulate limits (0.022 grains per dry standard cubic foot) required in the Consent Judgement. A copy of the letter from GE Energy is attached. Meeting this baghouse performance standard will assure that the emission rates will not exceed those modeled in the January 2001 attainment demonstration.

To accommodate this administrative change requires a modification to the Consent Judgement. The original Consent Judgement and the modification are attached. The modification asks the court to remove the phrase “and utilize teflon membrane bags” from four locations in the original Consent Judgement. This minor administrative change will allow Doe Run to use the new filter elements, but it will not relieve the company from any other requirements of the January 2001 Consent Judgement.

Once installed, Doe Run has agreed to perform emissions testing to assure that the new filter elements will meet the performance standards required in the January 2001 Consent Judgement.

All other enforceable requirements of the January 2001 SIP revision are to be maintained including; 10 CSR 10-6.120 Restriction of Emissions of Lead from Specific Lead Smelter-Refinery Operations and the Work Practice Manual.

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI**

STATE OF MISSOURI, ex rel.)	
JEREMIAH W. (JAY) NIXON, ATTORNEY)	
GENERAL OF MISSOURI, the)	
MISSOURI DEPARTMENT OF NATURAL)	
RESOURCES, and THE MISSOURI AIR)	
CONSERVATION COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No. CV301-OOS2CCJI
)	
THE DOE RUN RESOURCES COMPANY,)	
d/b/a, THE DOE RUN COMPANY)	
)	
Defendant)	

CONSENT JUDGEMENT MODIFICATION

WHEREAS, this action was commenced by the State of Missouri ex rel. Jeremiah W.

(Jay) Nixon, Attorney General of Missouri, and the Missouri Department of Natural Resources (“MDNR”), seeking injunctive relief and civil penalties against defendant The Doe Run Resources Company, d/b/a, The Doe Run Company (Doe Run), for alleged violations of the Missouri Air Conservation Law, Chapter 643, RSMo and its implementing regulations.

WHEREAS, on January 5, 2001, this Court entered and approved the Consent Judgment in the above-styled case.

WHEREAS, pursuant to Section F of the Consent Judgment, the parties may agree to modify the Judgment if the modification is in writing and approved by this Court. WHEREAS, certain provisions of the Consent Judgment mandate that Doe Run use a specific type of filter bags in baghouses used to control lead emissions from the smelter,

and Doe Run has since determined that another type of filter bag may provide the same or better control over the emissions of lead from the smelter.

NOW, THEREFORE, the parties agree that the Consent Judgment may be modified as follows and this Court hereby approves the Modification.

1. Paragraphs A.1 .b., A.1 .c. and A.3.b. are modified to delete the phrase “and utilize Teflon membrane filter bags” all four times it appears in said paragraphs.
2. All other provisions, terms and conditions of the Consent Judgment remain in full force and effect.

WE HEREBY CONSENT to this Modification of the Consent Judgment:
MISSOURI DEPARTMENT OF NATURAL RESOURCES

Dan Schuette
Interim Director, Air and Land Protection Division

Date:_____

JEREMIAH W. (JAY) NIXON
Attorney General

Shelley A. Woods
Assistant Attorney General

Date:_____

THE DOE RUN RESOURCES COMPANY

BY:_____

Date:_____

TITLE:_____

ENTERED: _____

Date

Circuit Judge
Wed, May 25, 2005

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, MISSOURI

STATE OF MISSOURI ex)
rel. Jeremiah W. (Jay) Nixon, the Missouri)
Department of Natural Resources, and the)
Missouri Air Conservation Commission)
Plaintiff)
v.)
The Doe Run Resources Company)
Defendant.)

Case No. CV301-00520-J1

CONSENT JUDGEMENT

Come Now The Doe Run Resources Corporation (Doe Run), Jeremiah W. (Jay) Nixon, the Attorney General of Missouri, the Missouri Department of Natural Resources (MDNR), and the Missouri Air Conservation Commission (Commission), and state as follows:

1. The state of Missouri, through its Attorney General, the MDNR, and the Commission, for, and in consideration, of Doe Run's agreement to complete the implementation of control strategies upon the time schedules as more fully set forth in the Consent Judgement below, and Doe Run for and in consideration of the state of Missouri's agreement to accept the implementation of said control strategies as sufficient, under current information and belief, to attain the federal and Missouri ambient air quality standard for lead and to accept the time table for completion of such control strategies as being as expeditious as practicable.

2. To this end, MDNR and the Commission are preparing a State Implementation Plan (SIP) revision to demonstrate attainment and maintenance of the

national ambient air quality standard for lead in Herculancum, Jefferson County, Missouri. As part of the SIP revision, a lead emissions reduction program at Doe Run's Herculancum, Missouri, facility is required. MDNR, the Attorney General, the Commission, and Doe Run agree that the Court may enter the Judgement set forth below to be binding on the parties, providing for a lead emission reduction program, which Doe Run hereby agrees to undertake and complete on the schedule set forth in the Judgement. The parties, by their signatures hereto, acknowledge that they have read and understand the terms of this Judgement and agree to be bound thereby.

This matter coming before the Court on the petition filed by the plaintiff state of Missouri, the Court having jurisdiction over the subject matter and the parties pursuant to §643.151, RSMo; and being fully advised in the premises;

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Doe Run undertake and complete, at its Herculancum, Missouri, facility, the following lead emission reduction program, on the schedule set forth below. These control measures and the associated schedules are the reasonably available control measures to be implemented to attain the national ambient air quality standard for lead (as required by Section 172(c) of the Clean Air Act Amendments of 1990).

A. Projects Required as SIP Control Measures:

1. Refinery Department Modifications

a. On or before July 31, 2001, and at all times thereafter, Doe Run shall install siding and roofing, engineered as a permanent total enclosure, to minimize the escape of uncontrolled air and lead-bearing particles from the Refinery Building. The existing Refinery Building roof monitor shall be removed and/or enclosed. The two existing roof ventilation fans (Aerovents) on the South end of the Refinery Building roof shall be removed or sealed. Doe Run's Work Practices Manual (Exhibit B, which, by this

reference is incorporated herein) shall outline the procedure for keeping building doors closed, except to allow for entering and exiting the building.

b. On or before July 31, 2001, and at all times thereafter, Doe Run shall install and operate a new ventilation system for kettles Number 9 through Number 11. On or before July 31, 2001, a new baghouse (Number 8 Baghouse) shall be installed and operated to service the kettle surface ventilation gases (kettles Number 9 through Number 11), the existing surface kettle ventilation gases (kettles Number 0 through Number 3), and the CV-10 conveyor area. This system shall be designed with a ventilation rate of 80,000 standard cubic feet per minute. Number 8 Baghouse shall be designed to meet a total suspended particulate specification of 0.022 grains per dry standard cubic foot of air and utilize Teflon membrane filter bags. The gases from Number 8 Baghouse shall be routed to a new 100-foot stack. The rate of ventilation shall be continuously measured at a point immediately before the gases enter Number 8 Baghouse, and the ventilation system shall be operated at all times except during Number 8 Baghouse maintenance, when all kettles that the ventilation serves are empty, or during other periods non-representative of normal operations. Alternatively, Doe Run shall develop a calculation for the relationship of fan amperage to ventilation rates and continuously record fan amperage. MDNR shall be given reasonable notice and opportunity to oversee the development of this calculation and approve it prior to its use.

c. On or before July 31, 2001, and at all times thereafter, the Refinery Building shall be ventilated to control fugitive emissions of lead from the building. This system shall be designed with a ventilation rate of 250,000 standard cubic feet of air per minute, and utilize Teflon membrane filter bags. The ventilation of the Refinery Building after enclosure shall be designed to maintain an in-draft at all Refinery Building openings under normal operating conditions. Doe Run shall conduct an initial in-draft compliance test and maintain records that demonstrate continued compliance with this in-draft

requirement. The initial test and compliance monitoring shall be conducted in a manner consistent with the Primary Lead Smelter Maximum Achievable Control Technology Standard (40 CFR, Part 63, Subpart TTT). On or before July 31, 2001, a new baghouse (Number 9 Baghouse) shall be installed and operated to service the Refinery Building ventilation gas stream. Number 9 Baghouse shall be designed to meet a total suspended particulate specification of 0.022 grains per dry standard cubic foot of air and utilize Teflon membrane filter bags. The gases from Number 9 Baghouse shall be routed to a new 100-foot stack. The rate of ventilation shall be continuously measured at a point immediately before the gases enter Number 9 Baghouse, and the ventilation system shall be operated at all times except during Number 9 Baghouse maintenance or during other periods nonrepresentative of normal operations. Alternatively, Doe Run shall develop a calculation for the relationship of fan amperage to ventilation rates and continuously record fan amperage. MDNR shall be given reasonable notice and opportunity to oversee the development of this calculation and approve it prior to its use.

d. On or before July 31, 2001, and at all times thereafter, continuous particulate monitors such as Triboflows or MDNR approved equivalents shall be installed and operated to monitor gases exiting Number 8 and Number 9 Baghouses. These continuous particulate monitors shall be designed to alert operators when particulate levels in the gases exiting the new baghouses are above those measured during normal bag-cleaning cycles. The output signals from these monitors shall be recorded during air lead emission stack tests. The setpoint of these alarms shall be set immediately after comprehensive inspections of Number 8 and Number 9 Baghouses. Doe Run shall give MDNR reasonable notice of the planned inspections so that MDNR inspectors have the opportunity to oversee these inspections. The alarms shall be operated and properly maintained such that they are individually out of service for no more than 48 hours per each calendar quarter. Doe Run shall maintain all necessary spare parts to assure that ar

extended alarm outage does not occur. Doe Run shall provide MDNR with a quarterly report within 30 days of the end of each calendar quarter summarizing the operations of Number 8 and Number 9 Baghouses, including ventilation rates, low flow or down-time episodes, alarm setpoints, alarm incidents, and any corrective actions taken during these events.

2. Dross plant and Refinery Dross system

a. On or before July 31, 2001, and at all times thereafter, Doe Run shall install and operate a new dross handling system, designed to minimize the handling of dross materials. The dross shall be water quenched and screw conveyed directly to a holding hopper prior to the conveyor belt transfer system.

3. Blast Furnace and Dross Plant Projects

a. On or before July 31, 2002, Doe Run shall install siding and roofing, engineered as a permanent total enclosure, to minimize the escape of uncontrolled air and lead-bearing particles from the Dross and Blast Furnace Building. The existing charge belt roof vents shall be removed and/or enclosed. The three existing roof ventilation fan (Aerovents) in the roof above the Dross area shall be removed and/or sealed. The individual feed floors and the furnace feed floor elevation shall be isolated from each other by the construction of permanent walls and doors. Doe Run's Work Practices Manual (Exhibit B) shall outline the procedure for keeping building doors closed, except to allow for entering and exiting the building.

b. On or before July 31, 2002, and at all times thereafter, Doe Run shall enclose and ventilate the CV-14 conveyor belt area. A ventilation system shall be designed such that additional ventilation rates of 100,000 and 150,000 standard cubic feet per minute shall serve the CV-14 conveyor belt area and Dross Plant roof area, respectively. The ventilation of the Blast Furnace and Dross Plant Buildings after enclosure shall be designed to maintain an in-draft at all building openings under normal

operating conditions. Doe Run shall conduct an initial in-draft compliance test and maintain records that demonstrate continued compliance with this in-draft requirement. The initial test and compliance monitoring shall be conducted in a manner consistent with the Primary Lead Smelter Maximum Achievable Control Technology Standard (40 CFR Part 63 Subpart TTT). On or before July 31, 2002, a new baghouse (Number 7 Baghouse) shall be installed and operated to service these ventilation gases. Number 7 Baghouse shall be designed to meet a total suspended particulate specification of 0.022 grains per dry standard cubic foot of air and utilize Teflon membrane filter bags. The gases from Number 7 Baghouse shall be routed to a new 100-foot stack. The rates of ventilation shall be continuously measured at a point immediately before the gases from the CV-14 conveyor area and Dress Plant roof areas combine. Alternatively, Doe Run shall develop a calculation for the relationship of fan amperage to ventilation rates and continuously record fan amperage. MDNR shall be given reasonable notice and opportunity to oversee the development of this calculation and approve it prior to its use. The ventilation system shall be operated at all times except during Number 7 Baghouse maintenance or during other periods non-representative of normal operations.

c. Doe Run shall continue to operate the existing ventilation system serving CV-14 conveyor belt area that was designed with a ventilation rate of 64,000 standard cubic feet per minute. Number 6 Baghouse shall continue to service this gas stream. On or before July 31, 2002, the ventilation rates of the existing CV-14 ventilation system shall be continuously measured at a point immediately before the gases enter Number 6 Baghouse. Alternatively, Doe Run shall develop a calculation for the relationship of fan amperage to ventilation rates and continuously record fan amperage. MDNR shall be given reasonable notice and opportunity to oversee the development of this calculation and approve it prior to its use.

4. The requirements of 40 CFR Part 63 Subpart TTT shall be maintained, particularly the building in-draft requirements. With the exception of the other specific monitoring and recordkeeping requirements set out in this Judgement, only those requirements of 40 CFR Part 63 Subpart TTT that apply to the State Implementation Plan controls outlined in this document shall be enforceable under this document. Upon state adoption of 40 CFR Part 63 Subpart TTT, all references in this Judgement to this Subpart shall be replaced with the state regulation that incorporates the federal regulation by reference, specifically, 10 CSR 10-6.075 (4)(TTT).

5. Existing Road Dust Controls

- a. Doe Run shall continue to wash roadways with fire-hoses in the plant according to procedures outlined in the Work Practice Manual (Exhibit B). When the ambient temperature is below 39 F, the procedure may be suspended. Doe Run shall continue to operate the existing street sweeping program. Weather permitting the sweeper shall be operated 4 hours per day, Monday through Friday, on all paved roadways within and around the plant. The sweeper shall be operated on those roadways typically controlled by fire-hosing when the ambient temperature does not permit fire-hosing and where those areas are accessible to the sweeper.

B. Enforcement Measures:

1. Stack Testing:

Compliance with the emission rates specified in 10 CSR 10-6.120 shall be demonstrated to MDNR by Doe Run, through tests conducted at Doe Run's expense in accordance with approved EPA methods. Lead emission rates shall be determined in accordance with 40 CFR Part 63, Subpart TTT by Doe Run and approved by MDNR, on a pounds per 24 hour basis. Testing shall be conducted in accordance with 40 CFR

63.1543 (d) and (e). Upon state adoption of 40 CFR Part 63, Subpart TTT, lead emission rates shall be determined in accordance with 10 CSR 10-6.075 (4)(TTT), on a pound per 24-hour basis. Doc Run shall notify MDNR of the proposed test dates and provide a copy of the test protocol to MDNR at least 30 days before testing. Test reports, including raw data, shall be submitted to MDNR within 60 working days of the completion of the test report.

2. Notification of Completion Dates:

Doc Run shall provide MDNR with written notification of completion of each project specified in Section A within 30 days of completion.

3. Limitation of Hours of Operation:

On or before July 31, 2001, and at all times thereafter, the rail car unloader shall be operated only between the hours of 6 AM and 6 PM. On or before July 31, 2001, and at all times thereafter, the rail car unloader shall unload baghouse fume only between the hours of 2 PM and 4 PM.

4. Process Weight Limits:

- a. Sinter plant production shall be limited to 283,920 tons of finished sinter per each calendar quarter.
- b. Blast furnace production shall be limited to 114,005 tons of lead contained in lead-bearing material charged per each calendar quarter.
- c. Refinery production shall be limited to 80,808 tons of lead metal contained per each calendar quarter.

5. Work Practice Manual:

Doc Run shall, to the extent consistent with this Judgment and 10 CSR 10-6.120 adhere to the "Work Practice Manual" (Exhibit B).

6. Record-Keeping:

Doe Run shall maintain the following records for MDNR review for a minimum of 5 years following the recording of information.

- a. Doe Run shall maintain a file that states for each quarter, i.) Sinter machine throughput, ii.) Blast furnace throughput, and iii.) Refined lead produced.
- b. Doe Run shall maintain a file of the date, time, findings, and corrective actions taken for all baghouse inspections scheduled in the Work Practice Manual, Exhibit B.
- c. Doe Run shall maintain a file that records any upset operating conditions or material spills that affect lead emissions.

Pending resolution of any enforcement action initiated by MDNR, Doe Run shall maintain all pertinent records indefinitely.

7. At a minimum, Doe Run shall continue the ambient air monitoring for lead at Station 3-Dunklin High School, Station 5- Bluff, and Station 7- Broad Street in accordance with the every sixth day national monitoring schedule. Any deviations from the every sixth day monitoring schedule must be approved by MDNR and EPA. Doe Run shall continue to collect meteorological data from the local meteorological station in accordance with the meteorological monitoring protocol until EPA has formally redesignated the Herculaneum Nonattainment Area as an attainment area for lead.

8. On or before July 31, 2001, and at all times thereafter, Doe Run shall install a fence to preclude public access. A map showing the fencing is attached as Exhibit A, which, by this reference is incorporated herein.

C. Projects required as Contingency Control Measures

If the air quality data for the third calendar quarter of 2002, or any quarter thereafter, exceeds the 1.5 g Pb/m³ quarterly average lead standard, MDNR shall notify Doe Run of such exceedence. In addition, in the event Doe Run fails to make reasonable further progress, which term is defined as failure to install or implement any of the above

control strategies on the schedule set forth herein, Doe Run shall begin implementation of the contingency measures. Doe Run shall begin implementation of contingency measures upon receipt of MDNR's notice, according to the following schedule:

Projects 1 through 5 will be implemented within 6 months of receipt of the notice.

Project 6 will be implemented within 9 months of receipt of the notice.

Contingency Measures:

1. Modify Cooler BH dilution air intake.
2. Modify roof monitor in the Sinter Plant Mixing Room (SPMR) with passive filters.
3. Enclose railcar fume loading station at Number 5 Baghouse.
4. Enclose North end of the railcar unloader.
5. Enclose North end of Number 1 trestle.
6. Modify sinter machine inlet to Number 3 Baghouse.

In the event that there is a second violation of the quarterly lead standard following implementation of the contingency measures listed above, Doe Run shall comply with one of the following:

1. The aggregate actual quarterly emissions from all fugitive and stack lead emission sources at the facility, except from the main stack, shall not exceed 80% of the aggregate estimated quarterly emissions from these same sources which were used to develop the SIP control strategy. The main stack is the existing 550 foot stack through which process gas streams are emitted to the atmosphere. The actual emissions shall be determined using the most current facility throughputs, and test data. The most accurate emission factors may be used where test data are not available;
2. Production of finished lead shall be limited to 50,000 short tons per quarter; or
3. Finished lead production, in tons per quarter, shall be limited to the following:

$$P = 50,000 + (500 \times (1 - A/E) \times 100)$$

Where P is finished lead production in short tons per quarter; A is the aggregate actual quarterly emissions from all fugitive and stack lead emission sources at the facility except from the main stack, in tons; E is the aggregate estimated quarterly emissions from all fugitive and stack lead emission sources at the facility, except from the main stack, in tons; and, where A/E cannot be less than 0.8 or more than 1.0.

This production limitation requirement shall commence on the first day of the calendar quarter following receipt by EPA or MDNR of the monitoring data indicating the second violation of the quarterly lead standard. Within 60 days of completion of each calendar quarter in which Doe Run is required to comply with the production limitation provision Doe Run shall submit a report indicating whether the requirements of the production limitation for the previous quarter were met. This report shall include finished lead production, the most current test data and emission factors applicable to sources at the facility, sample calculations which clearly demonstrate how emission reductions were calculated, and applicable operating data, such as material throughputs. The requirement to submit this report shall continue as long as Doe Run is required to limit production.

For those items identified above, Doe Run shall complete engineering on said projects no later than July 1, 2002. Bids for said projects will be then be solicited and reviewed annually starting in July of 2003.

Doe Run reserves the right to petition MDNR for approval to change the order of the contingency projects.

If Doe Run identifies and demonstrates to MDNR's satisfaction alternative control measure(s) that would achieve equal or greater air quality improvements than the Contingency Measure(s) identified above, MDNR agrees that Doe run may substitute the new control(s) for the contingency measure(s) identified above. Any substitute

contingency measure shall be implemented under the same time frame as the original measure, unless both parties agree to a modified contingency schedule. Any alternative contingency measures must be submitted to EPA as a SIP revision pursuant to Section 110(l) of the Clean Air Act Amendments of 1990.

D. Stipulated Penalties

1. If Doe Run fails to complete construction of the control measures set out in this Judgement by the dates specified, Doe Run shall pay stipulated penalties according to the following schedule. The penalties set forth below are per day penalties which are to be assessed beginning with the first day after the scheduled deadline date.

<u>Period of Noncompliance</u>	<u>Penalty per Day of Violation</u>
First through 30th day of noncompliance	-0-
31st through 60th day of noncompliance	\$100.00
60th through 90th day of noncompliance	\$250.00
Beyond 91st day of noncompliance	\$500.00

2. If Doe Run fails to comply with any other requirement of this Judgement, Doe Run shall pay stipulated penalties according to the following schedule. The penalties set forth below are per day penalties which are to be assessed beginning with the first day of violation after the scheduled deadline date.

<u>Period of Noncompliance</u>	<u>Penalty per Day of Violation</u>
First through 30th day of noncompliance	-0-
31st through 60th day of noncompliance	\$100.00
60th through 90th day of noncompliance	\$250.00
Beyond 91st day of noncompliance	\$500.00

3. The penalties set forth above are per day penalties which are to be assessed beginning with the first day of violation after the scheduled deadline date. All penalties shall be paid within 45 days of the date of notification of noncompliance unless Doe Run

challenges the penalty pursuant to the Dispute Resolution procedure outlined in Section E. If the penalty is challenged, it shall not be paid until 30 days after the Commission's determination that Doe Run owes the stipulated penalty, and Doe Run has failed to use, or has exhausted, its rights to review the Commission's Decision.

4. Stipulated penalties shall continue to accrue during the formal Dispute Resolution process or any appeal. In the event Doe Run prevails, stipulated penalties shall not be due or owed.

5. All penalties shall be paid by certified check made payable to the Jefferson County Treasurer as Trustee for the Jefferson County School Fund, and delivered to the Attorney General of Missouri, P.O. Box 899, Jefferson City, Missouri 65102-0899, Attention: Shelley A. Woods, Assistant Attorney General, or Designee.

6. The penalties set forth herein shall not apply in the event of a force majeure, as defined in this section. For the purposes of this Judgement, force majeure shall be defined as any event arising from causes beyond the control of Doe Run and of any entity controlled by Doe Run that delays or interferes with the performance of any obligation under this Judgement notwithstanding Doe Run's best efforts to avoid such an event. The requirement that Doe Run exercise "best efforts to avoid such an event" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring, and (2) following the potential force majeure event such that the adverse effect or delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include but are not limited to, increased costs or expenses of any work to be performed under this Judgement.

7. If any event occurs that is likely to delay or interfere with the performance of an obligation under this Judgement, whether or not caused by a force majeure event, Doe Run shall notify MDNR by telephone within 5 working days of Doe Run becoming

knowledgeable of such event, if Doe Run knows that the event is likely to delay or interfere with performance of an obligation under this Judgement. Within 10 business days thereafter, Doe Run shall provide in writing the reasons for the event; the anticipated duration; all actions taken or to be taken to minimize its effects; a schedule for implementation of any measures to be taken to mitigate the event; and a statement as to whether, in the opinion of Doe Run, such an event may cause or contribute to the endangerment of public health, public welfare, or the environment. Failure to comply with the substance of the above requirements shall preclude Doe Run from asserting any claim of force majeure.

8. If MDNR agrees that the delay or anticipated delay is attributable to a force majeure, then the time for performance of any obligation under this Judgement that is directly affected by the force majeure event shall be extended for a period of time not to exceed the actual duration of the delay caused by the force majeure event.

9. If MDNR does not agree that the delay or noncompliance has been or will be caused by a force majeure event, or does not agree with Doe Run on the length of any time extension, the issue shall be subject to the Dispute Resolution procedures set forth in Section E of this Judgement. In any such proceeding, to qualify for force majeure defense Doe Run shall have the burden of demonstrating by a preponderance of the evidence that the delay or noncompliance has been or will be caused by a force majeure event, that its duration was or will be warranted under the circumstances, that Doe Run exercised or is exercising due diligence by using its best efforts to avoid and mitigate its effects, and that Doe Run complied with the requirements of Paragraph 7 above. Should Doe Run carry the burden set forth in this Paragraph 9, the delay or noncompliance at issue shall be deemed not to be a violation of the affected obligation of this Judgement.

10. MDNR agrees it will only seek the stipulated penalties set forth herein for any alleged or actual noncompliance by Doe Run with any terms or requirements of this

Judgement, of the Work Practices Manual, or of 10 CSR 10-6.120(2)(B), and MDNR will not seek civil penalties pursuant section 643.151, RSMo. MDNR reserves any other remedies it may have to enforce the terms of this Judgement, including filing a Motion for Contempt, or for violations of any other provision of law for any such noncompliance. Notwithstanding any other provision of this Judgement, in the event EPA assesses a stipulated penalty under the Administrative Order on Consent, EPA Docket Numbers RCRA-7-2000-0018 and CERCLA-7-2000-0029, entered into by EPA, MDNR, and Doe Run on or about October 12, 2000, for a violation that would also constitute a violation under this Judgement. MDNR will not seek a stipulated penalty under this Judgement.

11. Upon the request of Doe Run, MDNR may in its unreviewable discretion impose a lesser penalty or no penalty at all for violations subject to stipulated penalties.

E. Dispute Resolution

Any dispute, which arises with respect to the meaning, application or implementation of this Consent Judgement, shall in the first instance be the subject of informal negotiations between Doe Run and MDNR. Notice of a dispute shall be given by the party alleging the dispute, shall be addressed in writing to the MDNR Director, and copied to the opposing party. Such notice shall state the specific grounds for the dispute, including any supporting documentation, and the relief requested.

The MDNR and Doe Run shall have thirty (30) days from the receipt of the notice of the dispute to resolve the dispute. If agreement is reached, the resolution shall be reduced to writing and this Judgement modified, if appropriate. If the MDNR and Doe Run are unable to reach complete agreement within the thirty-day period and this period is not extended in writing by mutual agreement of the parties, the matter will be submitted to the Court.

The parties will then be entitled to judicial review pursuant to Section 536.140, RSMo. The filing of a notice of dispute shall not automatically suspend or postpone any

parties' obligations under this Consent Judgment with respect to the disputed issue. This provision shall not be construed to prevent either party from requesting a stay of the party's obligations under this Consent Judgment, which request shall be filed at the same time as the notice of dispute.

F. Modifications

This Consent Judgment may be modified or amended only by written agreement between the parties, which shall be approved by this Court.

G. Termination

This Consent Judgment shall terminate upon the completion of the work set out herein, the payment of penalties due and upon approval by EPA of the next contr strategy revision, which may be redesignation and approval of a maintenance plan

The Doe Run Corporation

BY: Steven L. Brown, General Manager

DATE: 12/4/00

MISSOURI DEPARTMENT OF NATURAL RESOURCES

BY: Steven Mahfood

DATE: 1/3/2001

Steven Mahfood, Director

MISSOURI AIR CONSERVATION COMMISSION

BY: David C. Zimmerman

DATE: 12-7-2000

David Zimmerman, Chairperson



GE Energy

8800 East 63rd Street
Kansas City, Missouri 64133
USA

T 800 821 2222
T 816 356 8400
F 816 353 1873

March 4, 2005

Doe Run Company
881 Main Street
Herculaneum, MO 63048

Attn: Mr. Dave Bailey

Subj: PulsePleat® Filter Element Efficiency

Dear Dave:

In response to our conversations, based on operating parameters and specifications given by Doe Run Co. and noted in GE Energy's proposal, Doe Run's modified baghouse with BHA PulsePleat® filter elements will achieve the TSP limits of 0.022gr/dscf through the media when the baghouse is operated per the manufacturer's direction and PulsePleat® filter elements maintained and operated per BHA written instructions.

If you need any additional information, please feel free to contact Betsey Villarreal or me at 1-800-821-2222.

Sincerely,

Michael Johnson
Product Manager - Fine Filtration
GE Energy
BHA Fabric Filter

cc: Betsey Villarreal, Sr Sales Representative, GE Energy
Bryan Yetter, Product Manager - Pleated Products, GE Energy

PUBLIC HEARING ON
PROPOSED AMENDMENT TO
10 CSR 10-2.390

**CONFORMITY TO STATE OR FEDERAL IMPLEMENTATION PLANS OF
TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS DEVELOPED, FUNDED
OR APPROVED UNDER TITLE 23 U.S.C. OR THE FEDERAL TRANSIT LAWS**

This proposed amendment will amend original sections (1), (2), and (7) and original subsections (4)(B)–(4)(E), (5)(A), (5)(C), (5)(E), (6)(B), (6)(C), (9)(A)–(9)(C), (10)(A), and (15)(C); renumber and amend original sections (16)–(23) and (25); renumber original section (24); add new subsections (9)(D)–(9)(L), and new sections (16), (17), and (23).

Original section (1) and subsection (10)(A) are being amended to streamline and improve existing conformity regulations.

Original section (2) is being amended to apply to emissions of additional criteria pollutants and precursor pollutants, add project approval and funding limitations, add grace period for new nonattainment areas, and reflect new section number reference.

Original section (7), subsections (6)(C), (9)(A), and (15)(C) are being amended to reflect new section number references.

Original subsections (4)(B)–(4)(E) are being amended to add and clarify transportation plan conformity determination requirements and reflect new section number references.

Original subsection (5)(A) is being amended to require interagency consultation procedures in the implementation plan.

Original subsection (5)(C) is being amended to add to interagency consultation procedures projects requiring PM₁₀ hot-spot analysis, conformity requirements for isolated rural nonattainment and maintenance areas, and reflect new section number references.

Original subsection (5)(E) is being amended to correct *Code of Federal Regulation* reference.

Original subsection (6)(B) is being amended to provide grace period for transportation plans in certain ozone and CO areas and reflect new section number reference.

Original subsection (9)(B) is being amended to update *Table 1. Conformity Criteria* and reflect new section number reference.

Original subsection (9)(C) is being amended to retain applicability of 1-hour ozone National Ambient Air Quality Standards (NAAQS) in nonattainment and maintenance areas until revocation of 1-hour ozone NAAQS for an area and reflect new section number references.

Original section (16) is being renumbered and amended to respond to court decision and reflect new section number references.

Original section (17) is being renumbered and amended to add requirements to satisfy interim emissions tests in areas without motor vehicle emissions budgets and reflect new section number references.

Original sections (18), (19), and (21) are being renumbered and amended to respond to court decision.

Original section (20) is being renumbered and amended to expand grace period, include PM_{2.5} emissions, clarify conformity determination requirements, and reflect new section number references.

Original sections (22) and (25) are being renumbered and amended to reflect new section number references.

Original section (23) is being renumbered and amended to make *Code of Federal Regulation* correction.

Original section (24) is being renumbered.

New subsections (9)(D), (9)(E), and (9)(I) are being added to provide transportation conformity rule guidance for new 8-hour ozone and PM_{2.5} NAAQS.

New subsections (9)(F), (9)(G), (9)(H), (9)(J), (9)(K), and (9)(L) are being added to provide rule guidance for CO, PM₁₀ and NO₂ areas, limited maintenance areas, insignificant motor vehicle emissions, and isolated rural nonattainment and maintenance areas.

New section (16) is being added to provide criteria and procedures for localized CO and PM₁₀ violations (hot spots).

New section (17) is being added to provide criteria and procedures for compliance with PM₁₀ and PM_{2.5} control measures.

New section (23) is being added to provide procedures for determining localized CO and PM₁₀ concentrations (Hot-Spot Analysis).

Division 10—Air Conservation Commission

Chapter 2—Air Quality Standards and Air Pollution Control Rules Specific to the Kansas City Metropolitan Area

PROPOSED AMENDMENT

10 CSR 10-2.390 Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws. The commission proposes to amend original sections (1), (2) and (7), and original subsections (4)(B)–(4)(E), (5)(A), (5)(C), (5)(E), (6)(B), (6)(C), (9)(A)–(9)(C), (10)(A) and (15)(C); renumber and amend original sections (16)–(23) and (25); renumber original section (24); add new subsections (9)(D)–(9)(L) and new sections (16), (17) and (23). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

*PURPOSE: This rule implements section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.), and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to the applicable implementation plan, developed pursuant to section 110 and Part D of the CAA. This rule applies to the Kansas City ozone maintenance area. This amendment will make several changes to the current rule requiring transportation plans, programs, and projects to conform to state air quality implementation plans. This amendment will adopt specific revisions to the Federal Transportation Conformity Rule as amended July 1, 2004. A Transportation Conformity State Implementation Plan (SIP) revision consistent with this federal amendment must be submitted to the U.S. Environmental Protection Agency (EPA) within twelve (12) months. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the **Federal Register** Notice issued July 1, 2004, (Volume 69, Number 126, Pages 40003-40081), regarding Transportation Conformity Rule Amendments for the New 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards.*

PURPOSE: This rule implements section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.), and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 U.S.C. or the Federal

Transit Laws (49 U.S.C. Chapter 53). This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to the applicable implementation plan, developed pursuant to section 110 and Part D of the CAA. This rule applies to the Kansas City ozone maintenance area.

(1) Definitions.

- (A) Terms used but not defined in this rule shall have the meaning given them by the **Clean Air Act (CAA)**, Titles 23 and 49 **United States Code (U.S.C.)**., other United States Environmental Protection Agency (EPA) regulations, other **United States Department of Transportation (DOT)** regulations, or other state or local air quality or transportation rules, in that order of priority. Definitions for some terms used in this rule may be found in 10 CSR 10-6.020.
- (B) Additional definitions specific to this rule are as follows:
1. **One (1)-hour ozone National Ambient Air Quality Standard (NAAQS)—the one (1)-hour ozone national ambient air quality standard codified at 40 CFR 50.9;**
 2. **Eight (8)-hour ozone National Ambient Air Quality Standard (NAAQS)—the eight (8)-hour ozone national ambient air quality standard codified at 40 CFR 50.10;**
 - ~~[1-]~~3. Applicable implementation plan—defined in section 302(q) of the CAA, the portion (or portions) of the implementation plan for ozone, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA;
 - ~~[2-]~~4. CAA—the Clean Air Act, as amended (42 U.S.C., 7401 et seq.);
 - ~~[3-]~~5. Cause or contribute to a new violation for a project—
 - A. To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented; or
 - B. To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area;
 - ~~[4-]~~6. Clean data—air quality monitoring data determined by EPA to meet the requirements of 40 **Code of Federal Regulations (CFR)** part 58 that indicate attainment of the national ambient air quality standards;
 - ~~[5-]~~7. Consultation—in the transportation conformity process, one (1) party confers with another identified party, provides all information to that party needed for meaningful input, and considers the views of that party and responds to those views in a timely, substantive

written manner prior to any final decision on such action. Such views and written response shall be made part of the record of any decision or action;

~~[6.] **Control strategy implementation plan revision—the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA sections 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide);]**~~

8. Control strategy implementation plan revision—the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (including implementation plan revisions submitted to satisfy CAA sections 172(c), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 187(g), 189(a)(1)(B), 189(b)(1)(A), and 189(d); sections 192(a) and 192(b), for nitrogen dioxide; and any other applicable CAA provision requiring a demonstration of reasonable further progress or attainment);

~~[7.]~~**9. Design concept—the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed traffic rail transit, exclusive busway, etc.;**

~~[8.]~~**10. Design scope—the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.;**

11. Donut areas—geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are not isolated rural nonattainment and maintenance areas;

~~[9.]~~**12. DOT—the United States Department of Transportation;**

~~[10.]~~**13. EPA—the Environmental Protection Agency;**

~~[11.]~~**14. FHWA—the Federal Highway Administration of DOT;**

~~[12.]~~**15. FHWA/FTA project—for the purpose of this rule, any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for**

some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system;

- ~~[13.]~~16. Forecast period—with respect to a transportation plan, the period covered by the transportation plan pursuant to 23 CFR part 450;
- ~~[14.]~~17. FTA—the Federal Transit Administration of DOT;
- ~~[15.]~~18. Highway project—an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to—

 - A. Connect logical *termini* and be of sufficient length to address environmental matters on a broad scope;
 - B. Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and
 - C. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements;
- ~~[16.]~~19. Horizon year—a year for which the transportation plan describes the envisioned transportation system according to section (6) of this rule;
- ~~[17.]~~20. Hot-spot analysis—an estimation of likely future localized **carbon monoxide** (CO) and **particulate matter** (PM₁₀) pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality;
- ~~[18.]~~21. Increase the frequency or severity—to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented;
- 22. **Isolated rural nonattainment and maintenance areas—areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas do not have federally required metropolitan transportation plans or transportation improvement programs (TIPs) and do not have projects that are part of the emissions analysis of any metropolitan planning organization is (MPO's) metropolitan transportation plan or TIP. Projects in such areas are instead included in statewide transportation improvement programs. These areas are not donut areas;**

- [19-]23. Lapse—the conformity determination for a transportation plan or transportation improvement program (TIP) has expired, and thus there is no currently conforming transportation plan and TIP;
24. **Limited maintenance plan—a maintenance plan that EPA has determined meets EPA’s limited maintenance plan policy criteria for a given NAAQS and pollutant. To qualify for a limited maintenance plan, for example, an area must have a design value that is significantly below a given NAAQS, and it must be reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle emissions growth;**
- [20-]25. Maintenance area—any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA, as amended[.];
- [21-]26. Maintenance plan—an implementation plan under a section 175A of the CAA, as amended;
- [22-]27. Metropolitan planning area—the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and section 8 of the Federal Transit Act must be carried out;
- [23-]28. Metropolitan planning organization (MPO)—that organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 5303. It is the forum for cooperative transportation decision-making. The Mid-America Regional Council is the MPO for the Kansas City metropolitan area and the organization responsible for conducting the planning required under section 174 of the CAA;
- [24-] ~~Milestone—the meaning given in sections 182(g)(1) and 189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved;]~~
29. **Milestone—the meaning given in CAA sections 182(g)(1) and 189(c) for serious and above ozone nonattainment areas and PM₁₀ nonattainment areas, respectively. For all other nonattainment areas, a milestone consists of an emissions level and the date on which that level is to be achieved as required by the applicable CAA provision for reasonable further progress towards attainment;**
- [25-]30. Motor vehicle emissions budget—that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the National Ambient Air Quality Standards (NAAQS), for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and

emissions. For purposes of meeting the conformity test required under sections ~~[(16)]~~(18) and /or ~~[(17)]~~(19) of this rule, the motor vehicle emissions budget in the applicable Missouri State Implementation Plan shall be combined with the motor vehicle emissions budget for the same pollutant in the applicable Kansas State Implementation Plan;

- ~~[26.]~~31. National ambient air quality standards (NAAQS)—those standards established pursuant to section 109 of the CAA;
- ~~[27.]~~32. NEPA—the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.);
- ~~[28.]~~33. NEPA process completion—for the purposes of this rule, with respect to FHWA or FTA, the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA;
- ~~[29.]~~34. Nonattainment area—any geographic region of the United States which has been designated as nonattainment under section 107 of the CAA for any pollutant for which a national ambient air quality standard exists;
- ~~[30.]~~35. Project—a highway project or transit project;
- ~~[31.]~~36. Protective finding—a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment;
- ~~[32.]~~37. Recipient of funds designated under Title 23 U.S.C. or the Federal Transit Laws —any agency at any level of state, county, city, or regional government that routinely receives Title 23 U.S.C. or Federal Transit Laws funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees;
- ~~[33.]~~38. Regionally significant project—a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals, as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum: all principal

arterial highway and all fixed guideway transit facilities that offer an alternative to regional highway travel;

- [34.]39. Safety margin—the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance;
- [35.]40. Standard—a national ambient air quality standard;
- [36.]41. Statewide transportation improvement program (STIP)—a staged, multi-year, intermodal program of transportation projects which is consistent with the statewide transportation plan and planning processes and metropolitan transportation plans, transportation improvement programs (TIPs) and processes, developed pursuant to 23 CFR part 450;
- [37.]42. Statewide transportation plan—the official statewide, intermodal transportation plan that is developed through the statewide transportation planning process, pursuant to 23 CFR part 450;
- [38.]43. Transit—mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services;
- [39.]44. Transit project—an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to—
 - A. Connect logical *termini* and be of sufficient length to address environmental matters on a broad scope;
 - B. Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and
 - C. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements;
- [40.]45. Transportation control measure (TCM)—any measure that is specifically identified and committed to in the applicable implementation plan that is either one (1) of the types listed in section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the first sentence of this definition, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this rule;

- [41.]46. Transportation improvement program (TIP)—a staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450;
- [42.]47. Transportation plan—the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450;
- [43.]48. Transportation project—a highway project or a transit project; and
- [44.]49. Written commitment—for the purposes of this rule, a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgement that the commitment is an enforceable obligation under the applicable implementation plan.

(2) Applicability.

(A) Action Applicability.

- 1. Except as provided for in subsection (2)(C) of this rule or section [(23)](26), conformity determinations are required for—
 - A. The adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by a MPO or DOT;
 - B. The adoption, acceptance, approval or support of TIPs and TIP amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by a MPO or DOT; and
 - C. The approval, funding, or implementation of FHWA/FTA projects.
- 2. Conformity determinations are not required under this rule for individual projects which are not FHWA/FTA projects. However, section [(49)](21) applies to such projects if they are regionally significant.

(B) Geographic Applicability. The provisions of this rule shall apply in the Clay, Jackson and Platte Counties maintenance area for transportation-related criteria pollutants for which the area has a maintenance plan.

- 1. The provisions of this rule apply with respect to emissions of the following criteria pollutant: ozone, **carbon monoxide (CO), nitrogen dioxide (NO₂), particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀); and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM_{2.5}).**

2. The provisions of this rule **also** apply with respect to emissions of the following precursor pollutants: ~~[volatile organic compounds (VOC) and nitrogen oxides (NO_x) in ozone areas.]~~
 - A. **Volatile organic compounds (VOC) and nitrogen oxides (NO_x) in ozone areas;**
 - B. **NO_x in NO₂ areas; and**
 - C. **VOC and/or NO_x in PM₁₀ areas if the EPA regional administrator or the director of the state air agency has made a finding that transportation-related emissions of one (1) or both of these precursors within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT, or if applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.**
3. **The provisions of this rule apply to PM_{2.5} nonattainment and maintenance areas with respect to PM_{2.5} from re-entrained road dust if the EPA regional administrator or the director of the state air agency has made a finding that re-entrained road dust emissions within the area are a significant contributor to the PM_{2.5} nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) includes re-entrained road dust in the approved (or adequate) budget as part of the reasonable further progress, attainment or maintenance strategy. Re-entrained road dust emissions are produced by travel on paved and unpaved roads (including emissions from anti-skid and deicing materials).**
- ~~[3.]~~4. The provisions of this rule apply to the Clay, Jackson and Platte Counties maintenance area for twenty (20) years from the date EPA approves the area's request under section 107(d) of the CAA for redesignation to attainment, unless the applicable implementation plan specifies that the provisions of this rule shall apply for more than twenty (20) years.

(C) **Limitations. In order to receive any FHWA/FTA approval or funding actions, including NEPA approvals, for a project phase subject to this subpart, a currently conforming transportation plan and TIP must be in place at the time of project approval as described in section 93.114, except as provided by section 93.114(b).**

1. Projects subject to this rule for which the NEPA process and a conformity determination have been completed by DOT may proceed toward implementation without further conformity determinations unless more than three (3) years have elapsed since

the most recent major step (NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates) occurred. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding final design, right-of-way acquisition, construction, or any combination of these phases.

2. A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if three (3) years have elapsed since the most recent major step to advance the project occurred.

- (D) **Grace Period For New Nonattainment Areas.** For areas or portions of areas which have been continuously designated attainment or not designated for any ~~[standard]~~**NAAQS** for ozone, CO, PM₁₀, **PM_{2.5}** or NO₂ since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any ~~[standard]~~**NAAQS** for any of these pollutants, the provisions of this rule shall not apply with respect to that ~~[standard]~~**NAAQS** for twelve (12) months following the effective date of final designation to nonattainment for each ~~[standard]~~**NAAQS** for such pollutant.

- (3) **Priority.** When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among states or other jurisdictions.

- (4) **Frequency of Conformity Determinations.**

- (A) Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA/FTA projects must be made according to the requirements of this section and the applicable implementation plan.

- (B) **Frequency of Conformity Determinations for Transportation Plans.**

1. Each new transportation plan must be demonstrated to conform before the transportation plan is approved by the MPO or accepted by DOT.
2. All transportation plan revisions must be found to conform before the transportation plan revisions are approved by the MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in sections ~~[(23)]~~**(26)** and ~~[(24)]~~**(27)** and has been made in accordance with the notification provisions of subparagraph (5)(C)1.F. The conformity determination must be based on the transportation plan and the revision taken as a whole.
3. The MPO and DOT must determine the conformity of the transportation plan **(including a new regional emissions analysis)** no less frequently than every three (3) years. If more than three (3)

years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the transportation plan, the existing conformity determination will lapse.

(C) Frequency of Conformity Determinations for Transportation Improvement Programs.

1. A new TIP must be demonstrated to conform before the TIP is approved by the MPO or accepted by DOT.
2. A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in section [(23)](26) or section [(24)](27) and has been made in accordance with the notification provisions of subparagraph (5)(C)1.G.
3. The MPO and DOT must determine the conformity of the TIP **(including a new regional emissions analysis)** no less frequently than every three (3) years. If more than three (3) years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the TIP, the existing conformity determination will lapse.
- ~~4. After the MPO adopts a new or revised transportation plan, conformity of the TIP must be redetermined by the MPO and DOT within six (6) months from the date of DOT's conformity determination for the transportation plan, unless the new or revised plan merely adds or deletes exempt projects listed in sections (23) and (24) and has been made in accordance with the notification provisions of subparagraph (5)(C)1.G. Otherwise, the existing conformity determination for the TIP will lapse.]~~

(D) Projects. FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if **one (1) of the following occurs: a significant change in the project's design concept and scope;** three (3) years [have] elapsed[ed] since the most recent major step to advance the project; **or initiation of a supplemental environmental document for air quality purposes. Major steps include** [(NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; **and, construction (including federal** [or] approval of [the] plans, specifications and estimates) [occurred].

(E) Triggers for Transportation Plan and TIP Conformity Determinations. Conformity of existing transportation plans and TIPs must be redetermined within eighteen (18) months of the following, or the existing conformity determination will lapse, and no new project-level conformity determinations may be made until conformity of the transportation plan and TIP has been determined by the MPO and DOT—
[1. November 24, 1993;]

- [2-]1. The effective date of EPA's finding that motor vehicle emissions budgets from an initially submitted control strategy implementation plan or maintenance plan are adequate pursuant to subsection [(46)](18)(E) and can be used for transportation conformity purposes;
- [3-]2. **The effective date of EPA approval of a control strategy implementation plan revision or maintenance plan which establishes or revises a motor vehicle emissions budget if that budget has not yet been used in a conformity determination prior to approval; and**
- [4-] ~~EPA approval of an implementation plan revision that adds, deletes, or changes TCMs; and]~~
- [5-]3. **The effective date of EPA promulgation of an implementation plan which establishes or revises a motor vehicle emissions budget [or adds, deletes, or changes TCMs].**

(5) Consultation.

(A) General. Procedures for interagency consultation (federal, state, and local), resolution of conflicts, and public consultation are described in subsections (A) through (E) of this section. Public consultation procedures meet the requirements for public involvement in 23 CFR part 450.

1. **The implementation plan revision required shall include procedures for interagency consultation (federal, state, and local), resolution of conflicts, and public consultation as described in subsections (A) through (E) of this section. Public consultation procedures will be developed in accordance with the requirements for public involvement in 23 CFR part 450.**

[4-]2. MPOs and state departments of transportation will provide reasonable opportunity for consultation with state air agencies, local air quality and transportation agencies, DOT, and EPA, including consultation on the issues described in paragraph (C)1. of this section, before making conformity determinations.

(B) Interagency Consultation Procedures—General Factors.

1. Representatives of the MPO and its regional transportation policy advisory committee, state transportation agencies, state and local air quality agencies, and regional air quality policy advisory organization designated by the state air quality agencies under the provisions of CAA section 174 shall participate in an interagency consultation process in accordance with this section with each other and with FHWA and FTA and EPA on the development of the implementation plan, the list of TCMs in the applicable implementation plan, the unified planning work program under 23 CFR section 450.314, the transportation plan, the TIP, and any revisions to the preceding documents. Use of existing advisory committee structures will be the preferred mechanism for

interagency consultation during the early stages of planning or programming processes. Expansion of representation will occur as necessary to assure that consulting agencies have the opportunity to receive background information as it is developed and share ideas and concerns early in the planning or programming process. Where consultation takes place outside of existing advisory committee structures, local government transportation interests will be represented by four (4) persons (representing transit and roadway interests from each state) appointed by the chairs of the regional transportation policy advisory committee and local government air quality interests will be represented by four persons (at least one (1) from each state) appointed by the chairs of the regional air quality advisory organization. The air quality representation shall not duplicate representation from transportation agencies.

2. Roles and responsibilities of consulting agencies.

- A. It shall be the affirmative responsibility of the agency(ies) with the responsibility for preparing the final document to initiate the consultation process by notifying other participants of the proposed planning or programming process for the development of the following planning or programming documents: the regional transportation plan and the regional TIP, including revisions, the unified planning work program, and any conformity determinations, with the MPO as the responsible agency; the statewide transportation plan and STIP for northern Clay and northern and western Platte Counties, with the state transportation agency as the responsible agency; and the state air quality implementation plans with motor vehicle emissions budgets and control strategies, including revisions, with the state air quality agency in cooperation with the MPO as the responsible agencies.
- B. The adequacy of the consultation process for each type of document listed in subparagraph (5)(B)2.A. of this rule shall be assured by the agency responsible for that document, by meeting the requirements of parts (5)(B)2.A.(I)–(III) of this rule.
 - (I) The proposed planning or programming process must include at a minimum the following:
 - (a) The roles and responsibilities of each agency at each stage in the planning process, including technical meetings;
 - (b) The proposed organizational level of regular consultation;
 - (c) A process for circulating (or providing ready access to) draft documents and supporting

- materials for comment before formal adoption or publication;
 - (d) The frequency of, or process for convening, consultation meetings and responsibilities for establishing meeting agendas; and
 - (e) A process for responding to the significant comments of involved agencies.
 - (II) The time sequence and adequacy of the consultation process will be reviewed and determined for each type of planning or programming document by consensus of the consultation agencies at a meeting convened by the responsible agency for that purpose. These procedures shall subsequently become binding on all parties until such time as the procedures are revised by consensus of the consulting agencies.
 - (III) As a matter of policy, planning or programming processes must meet two (2) tests—
 - (a) Consultation opportunities must be provided early in the planning process. Early participation is intended to facilitate sharing of information needed for meaningful input and to allow the consulting agencies to confer with the responsible agency during the formative stages of the plan or program. At a minimum, proposed transportation planning or programming processes must specifically include opportunities for the consulting agencies to confer upon the conformity analysis required to make conformity determinations for transportation plans and TIPs prior to consideration of draft documents by the regional air quality advisory organization, the regional transportation policy advisory committee or the state transportation agency for the transportation planning area outside of the metropolitan planning area for transportation planning. Air quality planning processes must specifically include opportunities for the consulting agencies to confer upon the motor vehicle emissions budget before the budget is considered by the regional air quality advisory organization, the regional transportation policy advisory committee, and the state air quality agency.

Additionally, if TCMs are to be considered in transportation plans, TIPs or the state implementation plan, specific opportunities to consult upon TCMs by air quality and transportation agencies must be provided; and

- (b) Additional consultation opportunities must be provided prior to any final action by any responsible agency listed in subparagraph (5)(B)2.A. of this rule. Prior to formal action approving any plan or program, the consulting agencies must be given an opportunity to communicate their views in writing to the responsible agency. The responsible agency must consider the views of the consulting agencies and respond in writing to those views in a timely and complete manner prior to any final action on any plan or program. Such views and written response shall be made part of the record of any decision or action. Opportunities for formal consulting agency comment may run concurrent with other public review time frames. Participation or lack of participation by a consulting agency early in the planning or programming process has no bearing on their opportunity to submit formal comment prior to official action by the responsible agency.

3. Consultation on planning assumptions.

- A. Representatives of the conformity consulting agencies shall meet no less frequently than once per calendar year for the specific purpose of reviewing changes in transportation and air quality planning assumptions that could potentially impact the state implementation plan (SIP) motor vehicle emissions inventory, motor vehicle emissions budget and/or conformity determinations.
- B. It shall be the affirmative responsibility of each of the consulting agencies to advise the MPO of any pending changes in their planning assumptions. The MPO shall be responsible for convening a meeting to review planning assumptions in August of each year, unless an alternate date is agreed to by the consulting agencies, and at such other times as any of the consulting agencies proposes a change to any of these planning inputs. The purpose of the meeting(s)

is to share information and evaluate the potential impacts of any proposed changes in planning assumptions, and to inform each other regarding the timetable and scope of any upcoming studies or analyses that may lead to future revision of planning assumptions.

- C. If any consulting agency proposes to undertake a data collection, planning or study process to evaluate a planning assumption that may have a significant impact on the state implementation plan (SIP) motor vehicle emissions inventory, motor vehicle emissions budget and/or conformity determinations, all of the consulting agencies shall be given an opportunity to provide advisory input into that process. Examples of data, planning or study topics that may be of interest in this context include (but are not limited to):

- (I) Estimates of vehicle miles traveled;
- (II) Estimates of current vehicle travel speeds;
- (III) Regional population and employment projections;
- (IV) Regional transportation modeling assumptions;
- (V) The methodology for determining future travel speeds;
- (VI) The motor vehicle emissions model; and
- (VII) The methodology for estimating future vehicle miles traveled.

- D. Whenever a change in air quality or transportation planning assumptions is proposed that may have a significant impact on the SIP motor vehicle emissions inventory, motor vehicle emissions budget and/or conformity determinations, the agency proposing the change must provide all of the consulting agencies an opportunity to review the basis for the proposed change. All consulting agencies shall be given at least thirty (30) days to evaluate the impact of a proposed change in planning assumptions prior to final action by the agency proposing the change. (In the case of an EPA motor vehicle emissions model change, this would occur as part of the federal rulemaking process.)

4. It shall be the affirmative responsibility of the responsible agency to maintain a complete and accurate record of all agreements, planning and programming processes, and consultation activities required under this rule and to make these documents available for public inspection upon request. In addition, it shall be the affirmative responsibility of the responsible agency to supply the following information for inclusion in a notebook maintained within the offices of each of the conformity consulting agencies and at local public libraries. The MPO shall be responsible for distribution of

information to the libraries. Copies of the following information shall be provided to all of the other consulting agencies and additional copies as the MPO prescribes shall be provided to the MPO for placement in public libraries in the Kansas City region

- A. The full text of any transportation or air quality document specified in paragraph (5)(B)2. of this rule and undergoing public comment pending final action by the responsible agency. Copies for distribution to local libraries must be delivered to the MPO at least three (3) business days prior to the beginning of the public comment period;
- B. Summary of planning and programming processes for transportation plans, TIPs and SIPs identified in paragraph (5)(B)2. of this rule, after approval by consensus of the consulting agencies; and
- C. Reasonably understandable summaries of final planning and programming documents for the general public. This summary information must be accompanied by a complete list of all supporting information, reports, studies, and texts which provide background or further information, along with the location of the documents and instructions on how they can be accessed. Summaries of final documents shall be provided to the other consulting agencies and to the MPO within fourteen (14) days of final approval by the responsible agency. Summaries of the following documents are specifically required:
 - (I) Regional unified planning work program;
 - (II) Official projections of regional population and employment;
 - (III) Regional transportation plan;
 - (IV) State transportation plans for areas within the air quality planning area but outside of the metropolitan planning area for transportation;
 - (V) Regional transportation improvement program;
 - (VI) State transportation improvement program for areas within the air quality planning area but outside of the metropolitan planning area for transportation;
 - (VII) State air quality plan and emissions inventories, including motor vehicle emissions budgets; and
 - (VIII) The most recent analysis upon which a transportation/air quality conformity determination was made for a transportation plan or TIP.

- (C) Interagency Consultation Procedures: Specific Processes. Interagency consultation procedures shall also include the following specific processes:
 - 1. An interagency consultation process in accordance with subsection (5)(B) of this rule involving the MPO, the regional transportation

policy advisory committee, the regional air quality advisory organization, the state transportation and air quality agencies, EPA, FHWA and FTA shall be undertaken for the following:

- A. Evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;
- B. Determining which minor arterials and other transportation projects should be considered “regionally significant” for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)3. of this rule regarding changes in planning assumptions;
- C. Evaluating whether projects otherwise exempted from meeting the requirements of this rule (see sections [~~(23)~~](**26**) and [~~(24)~~](**27**)) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the transportation planning and TIP programming processes;
- D. Developing a list of TCMs to be included in the applicable implementation plan. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the state air quality implementation plan development process;
- E. Making a determination, as required by paragraph (13)(C)1., whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the transportation planning and TIP programming processes. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

- F. Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in section ~~[(23)]~~(26) or section ~~[(24)]~~(27). This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the transportation planning and TIP programming processes. The MPO shall notify all conformity consulting agencies in writing within seven (7) calendar days after taking action to approve such exempt projects. The notification shall include enough information about the exempt projects for the consulting agencies to determine their agreement or disagreement that the projects are exempt under section ~~[(23)]~~(26) or section ~~[(24)]~~(27) of this rule;
- G. Determining whether the project is included in the regional emissions analysis supporting the current conforming TIP's conformity determination, even if the project is not strictly included in the TIP for purposes of MPO project selection or endorsement, and whether the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the TIP programming process;
- H. Determining what forecast of vehicle miles traveled (VMT) to use in establishing or tracking emissions budgets, developing transportation plans, TIPs, or applicable implementation plans, or making conformity determinations. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)3. of this rule regarding planning assumptions;
- I. Determining the definition of reasonable professional practice for the purposes of section ~~[(20)]~~(22). This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)3. of this rule regarding planning assumptions; ~~and~~
- J. Determining whether the project sponsor or the MPO has demonstrated that the requirements of section ~~[(16)]~~(18) are satisfied without a particular mitigation or control measure, as provided in subsection ~~[(22)]~~(25)(D). This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the transportation planning and TIP programming processes[-];
- K. **Identifying, as required by subsection (23)(B), projects located at sites in PM₁₀ nonattainment areas which have**

vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM₁₀ hot-spot analysis; and

L. Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by paragraph (9)(L)2.

2. An interagency consultation process in accordance with subsection (5)(B) of this rule involving the MPO, the regional air quality advisory organization, the regional transportation policy advisory committee and the state air quality and transportation agencies for the following:
 - A. Evaluating events which will trigger new conformity determinations in addition to those triggering events established in section (4). This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)3. of this rule regarding planning assumptions when there is a significant change in any planning assumption (examples: new regional forecast of population and employment, actual vehicle miles traveled (VMT) estimates significantly different from planning projections, etc.); and
 - B. Consulting on emissions analysis for transportation activities which cross the borders of the MPOs or nonattainment or maintenance area or air basin. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule.
3. Prior to establishing a metropolitan planning area for transportation planning that does not include the entire nonattainment or maintenance area, the interagency consultation process described in subsection (5)(B) of this rule shall be supplemented by a formal memorandum of agreement, incorporated in the applicable state implementation plan, executed by the MPO and the state air quality and transportation agencies for cooperative planning and analysis. This executed memorandum of agreement shall specify procedures for determining conformity of all regionally significant transportation projects outside the metropolitan planning boundary for transportation planning and within the nonattainment or maintenance area.
 - A. The interagency consultation process established by the executed memorandum of agreement for such an area shall apply in addition to all other consultation requirements.
 - B. At a minimum, any memorandum of agreement establishing a state transportation planning area outside of the MPO metropolitan planning area for transportation planning, but

within the nonattainment or maintenance area, shall provide for state air quality agency concurrence in conformity determinations for areas outside of the metropolitan planning boundary for transportation planning, but within the nonattainment or maintenance area. Such agreement shall also establish a process involving the MPO and the state transportation agency in cooperative planning and analysis for determining conformity of all projects outside the metropolitan planning area for transportation planning and within the nonattainment or maintenance area in the context of the total regional transportation system that serves the nonattainment or maintenance area.

4. An interagency consultation process shall be undertaken to ensure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including those by recipients of funds designated under Title 23 U.S.C. or the Federal Transit Laws, are disclosed to the MPO on a regular basis, and to ensure that any changes to those plans are immediately disclosed. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the transportation planning and TIP programming processes. At a minimum, the disclosure procedures shall meet the requirements of subparagraph (5)(B)4.A.–C. of this rule.

- A. The sponsor of any such regionally significant project, and any agency that becomes aware of any such project through applications for approval, permitting or funding shall disclose such project to the MPO in a timely manner. Such disclosure shall be made not later than the first occasion when any of the following actions is sought: any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent on the completion of a regionally significant project. The sponsor of any potential regionally significant project shall disclose to the MPO each project for which alternatives have been identified through the NEPA process, and, in particular, any preferred alternative that may

be a regionally significant project. This information shall be provided to the MPO in accordance with the time sequence and procedures established under paragraph (5)(B)2. of this rule for each transportation planning and TIP development process.

- B. In the case of any such regionally significant project that has not been disclosed to the MPO and other agencies participating in the consultation process before action is taken to adopt or approve, such regionally significant project shall be deemed not to be included in the regional emissions analysis supporting the currently conforming TIP's conformity determination and not to be consistent with the motor vehicle emissions budget in the applicable implementation plan, for the purposes of section ~~[(49)]~~(21).
 - C. For the purposes of paragraph (5)(C)4. of this rule, the phrase adopt or approve of a regionally significant project means the first time any action necessary to authorizing a project occurs, such as any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the MPO that the project may be adopted or approved.
- 5. This interagency consultation process shall be undertaken in accordance with subsection (5)(B) of this rule involving the MPO and other recipients of funds designated under Title 23 U.S.C. or the Federal Transit Laws for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (5)(C)4. of this rule but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis according to the requirements of section ~~[(20)]~~(22). This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)3. of this rule as it relates to planning assumptions.
 - 6. This interagency consultation process outlined in subsection (5)(B) of this rule involves the MPO, the regional transportation policy advisory committee, the regional air quality advisory organization, and the state transportation and air quality agencies shall be undertaken for the design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO (e.g., household/travel transportation surveys). This process shall be initiated by the MPO and conducted

in accordance with paragraph (5)(B)3. of this rule as it relates to planning assumptions.

7. This process insures providing final documents (including applicable implementation plans and implementation plan revisions) and supporting information to each agency after approval or adoption. This process is applicable to all agencies described in paragraph (A)1. of this section, including federal agencies.

(D) Resolving Conflicts.

1. Any conflict among state agencies or between state agencies and the MPO regarding a final action on any conformity determination by the MPO on a plan or program subject to these consultation requirements shall be escalated to the governor(s), if the conflict cannot be resolved by the heads of the involved agencies. Such agencies shall make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible.
2. After the MPO has notified the state air quality agencies in writing of the disposition of all air quality agency comments on a proposed conformity determination, state air quality agencies shall have fourteen (14) calendar days from the date that the written notification is received to appeal such proposed determination of conformity to the governor of Missouri. If the Missouri air quality agency appeals to the governor of Missouri, the final conformity determination will automatically become contingent upon concurrence of the governor of Missouri. If the Kansas air quality agency presents an appeal to the governor of Missouri regarding a conflict involving both Kansas and Missouri agencies or the MPO, the final conformity determination will automatically become contingent upon concurrence of both the governor of Missouri and the governor of Kansas. The Missouri air quality agency shall provide notice of any appeal under this subsection to the MPO, and the state transportation agencies, and the Kansas air quality agency. If neither state air quality agency appeals to the governor(s) within fourteen (14) days of receiving written notification, the MPO may proceed with the final conformity determination.
3. The governor of Missouri may delegate the role of hearing any such appeal under this subsection and of deciding whether to concur in the conformity determination to another official or agency within the state, but not to the head or staff of the Missouri air quality agency, the Missouri Air Conservation Commission or any local air quality agency, the Missouri transportation agency or the Missouri Highway Commission, or any agency that has responsibility for one (1) of these functions, or the MPO.

- (E) Public Consultation Procedures. Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish

a proactive public involvement process. This process will provide opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of 23 CFR part 450 including part 450.316(b)(1), 450.322(c), and 450.324(c) as in effect on the date of adoption of this rule. The public shall be assured reasonable access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with these requirements and those of 23 CFR 450.316(b). In addition, these agencies must specifically respond in writing to all public comments stating that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law (for example, NEPA). The opportunity for public involvement provided under this subsection shall include access to information, emissions data, analyses and modeling assumptions used to perform a conformity determination, in accordance with the provisions of paragraph (5)(B)4. of this rule, and the obligation of any such agency to consider and respond to significant comments. No transportation plan, TIP or project may be found to conform unless the determination of conformity has been subject to a public involvement process in accordance with this subsection, without regard to whether the DOT has certified any process under 23 CFR part 450. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in ~~[49 CFR 7.95]~~ **49 CFR 7.43**.

(6) Content of Transportation Plans.

(A) Transportation Plans Adopted after January 1, 1997, in Serious, Severe, or Extreme Ozone Nonattainment Areas. If the metropolitan planning area contains an urbanized area population greater than two hundred thousand (>200,000), the transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

1. The agency or organization developing the transportation plan, after consultation in accordance with section (5), may choose any years to be horizon years, subject to the following restrictions:
 - A. Horizon years may be no more than ten (10) years apart;
 - B. The first horizon year may be no more than ten (10) years from the base year used to validate the transportation demand planning model;
 - C. If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year; and

- D. The last horizon year must be the last year of the transportation plan's forecast period.
- 2. For these horizon years—
 - A. The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and the consultation requirements specified by section (5);
 - B. The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies that are sufficient for modeling of their transit ridership. Additions and modifications to the transportation network shall be described sufficiently to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and
 - C. Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

- (B) ~~[Moderate Areas Reclassified to Serious. Ozone nonattainment areas which are reclassified from moderate to serious and have an urbanized population greater than two hundred thousand (>200,000) must meet the requirements of subsection (6)(A) of this rule within two (2) years from the date of reclassification.]~~ **Two-year grace period for transportation plan requirements in certain ozone and CO areas. The requirements of subsection (a) of this section apply to such areas or portions of such areas that have previously not been required to meet these requirements for any existing NAAQS two (2) years from the following:**
- 1. **The effective date of EPA's reclassification of an ozone or CO nonattainment area that has an urbanized area population greater than two hundred thousand (>200,000) to serious or above;**

2. **The official notice by the Census Bureau that determines the urbanized area population of a serious or above or CO nonattainment area to be greater than two hundred thousand (>200,000); or,**
 3. **The effective date of EPA's action that classifies a newly designated ozone or CO nonattainment area that has an urbanized area population greater than two hundred thousand (>200,000) as serious or above.**
- (C) Transportation Plans for Other Areas. Transportation plans for other areas must meet the requirements of subsection (6)(A) of this rule at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans must describe the transportation system envisioned for the future and must be sufficiently described within the transportation plans so that a conformity determination can be made according to the criteria and procedures of sections (9)–~~[(17)]~~**(19)**.
- (D) Savings. The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.
- (7) Relationship of Transportation Plan and TIP Conformity with the NEPA Process. The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project must meet the criteria in sections (9)–~~[(17)]~~**(19)** for projects not from a TIP before NEPA process completion.
- (8) Fiscal Constraints for Transportation Plans and TIPs. Transportation plans and TIPs must be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR part 450 as in effect on the date of adoption of this rule in order to be found in conformity. The determination that a transportation plan or TIP is fiscally constrained shall be subject to consultation in accordance with section (5) of this rule.
- (9) Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects—General.
- (A) In order for each transportation plan, program, and FHWA/FTA project to be found to conform, the MPO and DOT must demonstrate that the applicable criteria and procedures in sections (10)–~~[(17)]~~**(19)** as listed in Table 1 in subsection (9)(B) of this rule are satisfied, and the MPO and DOT must comply with all applicable conformity requirements of implementation plans and this rule and of court orders for the area which pertain specifically to conformity. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects), the relevant pollutant(s), and the status of the implementation plan.

- (B) ~~[The following]~~ **Table 1 in this section** indicates the criteria and procedures in sections (10)–~~(17)~~**(19)** which apply for transportation plans, TIPs, and FHWA/FTA projects. Subsections (C) **through (I)** of this section explain[s] when **the** budget, ~~[and]~~ **interim** emissions, ~~[reduction tests]~~**and hot-spot tests** are required for ~~[ozone nonattainment and maintenance areas]~~**each pollutant and NAAQS**. Subsection (J) of this section addresses **conformity requirements for areas with approved or adequate limited maintenance plans**. Subsection (K) of this section addresses **nonattainment and maintenance areas which EPA has determined have insignificant motor vehicle emissions**. Subsection (L) of this section addresses **isolated rural nonattainment and maintenance areas**. Subsection (D) of this section explains when budget and emission reduction tests are required for CO nonattainment and maintenance areas. Table 1 follows:

Table 1. Conformity Criteria

All Actions at [a]All [t]Times—

Section (10)	Latest planning assumptions
Section (11)	Latest emissions model
Section (12)	Consultation

Transportation Plan—

Subsection (13)(B)	TCMs
Section [(16)] (18) and/or Section [(17)] (19)	Emissions budget and/or interim emissions [reduction]

TIP—

Subsection (13)(C)	TCMs
Section [(16)] (18) and/or Section [(17)] (19)	Emissions budget and/or interim emissions [reduction]

Project (From a Conforming Plan and TIP)—

Section (14)	Currently conforming plan and TIP
Section (15)	Project from a conforming plan and TIP
Section (16)	CO and PM₁₀ hot spots
Section (17)	PM₁₀ and PM_{2.5} control measures

Project (Not From a Conforming Plan and TIP)—

Subsection (13)(D)	TCMs
Section (14)	Currently conforming plan and TIP
Section (16)	CO and PM₁₀ hot spots
Section (17)	PM₁₀ and PM_{2.5} Control Measures
Section [(16)] (18) and/or Section [(17)] (19)	Emissions budget and/or

interim emissions [~~reduction~~]

- (C) One **(1)-hour** Ozone NAAQS Nonattainment and Maintenance Areas. **This subsection applies when an area is nonattainment or maintenance for the one (1)-hour ozone NAAQS (i.e., until the effective date of any revocation of the one (1)-hour ozone NAAQS for an area).** In addition to the criteria listed in Table 1 in subsection (B) of this section that are required to be satisfied at all times, in ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or **interim** emissions [~~reduction~~] tests are satisfied as described in the following:
1. In **all one (1)-hour** ozone nonattainment and maintenance areas the budget test must be satisfied as required by section [(46)](**18**) for conformity determinations made **on or after**—
 - A. [~~Forty-five (45) days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or~~] **The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the one (1)-hour ozone NAAQS is adequate for transportation conformity purposes;**
 - B. [~~After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;~~] **The publication date of EPA's approval of such a budget in the *Federal Register*; or**
 - C. **The effective date of EPA's approval of such a budget in the *Federal Register*, if such approval is completed through direct final rulemaking;**
 2. In ozone nonattainment areas that are required to submit a control strategy implementation plan revision **for the one (1)-hour ozone NAAQS** (usually moderate and above areas), the **interim** emissions [~~reduction~~] tests must be satisfied as required by section [(47)](**19**) for conformity determinations made[—]**when there is no approved motor vehicle emissions budget from an applicable implementation plan for the one (1)-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the one (1)-hour ozone NAAQS;**
 - [A. — ~~During the first forty-five (45) days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle~~

emissions budget adequate for transportation conformity purposes; or

B. ~~If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan;~~]

3. An ozone nonattainment area must satisfy the **interim** emissions [reduction] test for NO_x, as required by section [(47)](19), if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a fifteen percent (15%) plan or Phase I attainment demonstration that does not include a motor vehicle emissions budget for NO_x. The implementation plan **for the one (1)-hour ozone NAAQS** will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 1990;
4. Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision **for the one (1)-hour ozone NAAQS** (usually marginal and below areas) must satisfy one (1) of the following requirements[;]—
 - A. The **interim** emissions [reduction] tests required by section [(47)](19); or
 - B. The state shall submit to EPA an implementation plan revision **for the one (1)-hour NAAQS** that contains motor vehicle emissions budget(s) and ~~an~~**a reasonable further progress or** attainment demonstration, and the budget test required by section [(46)](18) must be satisfied using the [submitted]**adequate or approved** motor vehicle emissions budget(s) (as described in paragraph (C)1. of this section); and
5. Notwithstanding paragraphs (C)1. and (C)2. of this section, moderate and above ozone nonattainment areas with three (3) years of clean data **for the one (1)-hour ozone NAAQS** that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements **for the one (1)-hour ozone NAAQS** must satisfy one (1) of the following requirements[;]—

- A. The **interim** emissions [~~reduction~~] tests as required by section [(17)](19);
 - B. The budget test as required by section [(16)](18), using the **adequate or approved** motor vehicle emissions budgets in the submitted **or applicable** control strategy implementation plan **for the one (1)-hour ozone NAAQS** (subject to the timing requirements of paragraph (C)1. of this section); or
 - C. The budget test as required by section [(16)](18), using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data **for the one (1)-hour ozone NAAQS**.
- (D) **Eight (8)-hour ozone NAAQS nonattainment and maintenance areas without motor vehicle emissions budgets for the one (1)-hour ozone NAAQS for any portion of the eight (8)-hour nonattainment area. This subsection applies to areas that were never designated nonattainment for the one (1)-hour ozone NAAQS and areas that were designated nonattainment for the one (1)-hour ozone NAAQS but that never submitted a control strategy SIP or maintenance plan with approved or adequate motor vehicle emissions budgets. This subsection applies one (1) year after the effective date of EPA's nonattainment designation for the eight (8)-hour ozone NAAQS for an area, according to subsection (2)(D). In addition to the criteria listed in Table 1 in subsection (B) of this section that are required to be satisfied at all times, in such eight (8)-hour ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:**
- 1. **In such eight (8)-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by section (18) for conformity determinations made on or after—**
 - A. **The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the eight (8)-hour ozone NAAQS is adequate for transportation conformity purposes;**
 - B. **The publication date of EPA's approval of such a budget in the *Federal Register*; or**
 - C. **The effective date of EPA's approval of such a budget in the *Federal Register*, if such approval is completed through direct final rulemaking.**
 - 2. **In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the eight (8)-hour ozone NAAQS (usually moderate and above and certain**

Clean Air Act, part D, subpart 1 areas), the interim emissions tests must be satisfied as required by section (19) for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for the eight (8)-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the eight (8)-hour ozone NAAQS.

3. Such an eight (8)-hour ozone nonattainment area must satisfy the interim emissions test for NO_x, as required by section (19), if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a fifteen percent (15%) plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO_x. The implementation plan for the eight (8)-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 2002.
4. Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision for the eight (8)-hour ozone NAAQS (usually marginal and certain Clean Air Act, part D, subpart 1 areas) must satisfy one (1) of the following requirements—
 - A. The interim emissions tests required by section (19); or
 - B. The State shall submit to EPA an implementation plan revision for the eight (8)-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by section (18) must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in paragraph (D)1. of this section).
5. Notwithstanding paragraphs (D)1. and (D)2. of this section, ozone nonattainment areas with three (3) years of clean data for the eight (8)-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the eight (8)-hour ozone NAAQS must satisfy one (1) of the following requirements—
 - A. The interim emissions tests as required by section (19);

- B. The budget test as required by section (18), using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the eight (8)-hour ozone NAAQS (subject to the timing requirements of paragraph (D)1. of this section); or**
- C. The budget test as required by section (18), using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the eight (8)-hour ozone NAAQS.**

(E) Eight (8)-hour ozone NAAQS nonattainment and maintenance areas with motor vehicle emissions budgets for the one (1)-hour ozone NAAQS that cover all or a portion of the eight (8)-hour nonattainment area. This provision applies one (1) year after the effective date of EPA's nonattainment designation for the eight (8)-hour ozone NAAQS for an area, according to subsection (2)(D). In addition to the criteria listed in Table 1 in subsection (B) of this section that are required to be satisfied at all times, in such eight (8)-hour ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

- 1. In such eight (8)-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by section (18) for conformity determinations made on or after—**
 - A. The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the eight (8)-hour ozone NAAQS is adequate for transportation conformity purposes;**
 - B. The publication date of EPA's approval of such budget in the *Federal Register*; or**
 - C. The effective date of EPA's approval of such a budget in the *Federal Register*, if such approval is completed through direct final rulemaking.**
- 2. Prior to paragraph (E)1. of this section applying, the following test(s) must be satisfied, subject to the exception in subparagraph (E)2.E.—**
 - A. If the eight (8)-hour ozone nonattainment area covers the same geographic area as the one (1)-hour ozone nonattainment or maintenance area(s), the budget test as required by section (18) using the approved or adequate motor vehicle emissions budgets in the one (1)-**

hour ozone applicable implementation plan or implementation plan submission;

B. If the eight (8)-hour ozone nonattainment area covers a smaller geographic area within the one (1)-hour ozone nonattainment or maintenance area(s), the budget test as required by section (18) for either—

- (I) The eight (8)-hour nonattainment area using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets in the one (1)-hour ozone applicable implementation plan or implementation plan submission where such portion(s) can reasonably be identified through the interagency consultation process required by section (5); or**
- (II) The one (1)-hour nonattainment area using the approved or adequate motor vehicle emissions budgets in the one (1)-hour ozone applicable implementation plan or implementation plan submission. If additional emissions reductions are necessary to meet the budget test for the eight (8)-hour ozone NAAQS in such cases, these emissions reductions must come from within the eight (8)-hour nonattainment area;**

C. If the eight (8)-hour ozone nonattainment area covers a larger geographic area and encompasses the entire (1)-hour ozone nonattainment or maintenance area(s)—

- (I) The budget test as required by section (18) for the portion of the eight (8)-hour ozone nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the one (1)-hour ozone applicable implementation plan or implementation plan submission; and**
- (II) The interim emissions tests as required by section (19) for either—the portion of the eight (8)-hour ozone nonattainment area not covered by the approved or adequate budgets in the one (1)-hour ozone implementation plan, the entire eight (8)-hour ozone nonattainment area, or the entire portion of the eight (8)-hour ozone nonattainment area within an individual state, in the case where separate one (1)-hour SIP budgets are established for each state of a multi-state one (1)-hour nonattainment or maintenance area;**

D. If the eight (8)-hour ozone nonattainment area partially covers a one (1)-hour ozone nonattainment or maintenance area(s)—

- (I) The budget test as required by section (18) for the portion of the eight (8)-hour ozone nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets in the one (1)-hour ozone applicable implementation plan or implementation plan submission where they can be reasonably identified through the interagency consultation process required by section (5); and**
- (II) The interim emissions tests as required by section (19), when applicable, for either—the portion of the eight (8)-hour ozone nonattainment area not covered by the approved or adequate budgets in the one (1)-hour ozone implementation plan, the entire eight (8)-hour ozone nonattainment area, or the entire portion of the eight (8)-hour ozone nonattainment area within an individual state, in the case where separate one (1)-hour SIP budgets are established for each state in a multi-state one (1)-hour nonattainment or maintenance area.**

E. Notwithstanding subparagraphs (E)2.A., B., C., or D. of this section, the interim emissions tests as required by section (19), where the budget test using the approved or adequate motor vehicle emissions budgets in the one (1)-hour ozone applicable implementation plan(s) or implementation plan submission(s) for the relevant area or portion thereof is not the appropriate test and the interim emissions tests are more appropriate to ensure that the transportation plan, TIP, or project not from a conforming plan and TIP will not create new violations, worsen existing violations, or delay timely attainment of the eight (8)-hour ozone standard, as determined through the interagency consultation process required by section (5).

3. Such an eight (8)-hour ozone nonattainment area must satisfy the interim emissions test for NO_x, as required by section (19), if the only implementation plan or plan submission that is applicable for the purposes of conformity determinations is a fifteen percent (15%) plan or other control strategy SIP that addresses reasonable further progress that does not include a

motor vehicle emissions budget for NO_x. The implementation plan for the eight (8)-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 2002. Prior to an adequate or approved NO_x motor vehicle emissions budget in the implementation plan submission for the eight (8)-hour ozone NAAQS, the implementation plan for the one (1)-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 1990.

4. Notwithstanding paragraphs (E)1. and (E)2. of this section, ozone nonattainment areas with three (3) years of clean data for the eight (8)-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the eight (8)-hour ozone NAAQS must satisfy one (1) of the following requirements—

- A. The budget test and/or interim emissions tests as required by sections (18) and (19) and as described in paragraph (E)2. of this section;
- B. The budget test as required by section (18), using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the eight (8)-hour ozone NAAQS (subject to the timing requirements of paragraph (E)1. of this section); or
- C. The budget test as required by section (18), using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the eight (8)-hour ozone NAAQS.

(F) CO nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in subsection (B) of this section that are required to be satisfied at all times, in CO nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or interim emissions tests are satisfied as described in the following:

1. FHWA/FTA projects in CO nonattainment or maintenance areas must satisfy the hot spot test required by section (16) at all times. Until a CO attainment demonstration or maintenance plan is approved by EPA, FHWA/FTA projects must also satisfy the hot-spot test required by subsection (16)(B).
 2. In CO nonattainment and maintenance areas the budget test must be satisfied as required by section (18) for conformity determinations made on or after—
 - A. The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;
 - B. The publication date of EPA's approval of such a budget in the *Federal Register*; or
 - C. The effective date of EPA's approval of such a budget in the *Federal Register*, if such approval is completed through direct final rulemaking.
 3. Except as provided in paragraph (F)4. of this section, in CO nonattainment areas the interim emissions tests must be satisfied as required by section (19) for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.
 4. CO nonattainment areas that have not submitted a maintenance plan and that are not required to submit an attainment demonstration (e.g., moderate CO areas with a design value of 12.7 ppm or less or not classified CO areas) must satisfy one (1) of the following requirements:
 - A. The interim emissions tests required by section (19); or
 - B. The state shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by section (18) must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in paragraph (F)2. of this section).
- (G) PM₁₀ nonattainment and maintenance areas. In addition to the criteria listed in Table 1 of subsection (B) of this section that are required to be satisfied at all times, in PM₁₀ nonattainment and maintenance areas conformity determinations must include a demonstration that the hot-spot, budget and/or interim emissions tests are satisfied as described in the following:

1. FHWA/FTA projects in PM₁₀ nonattainment or maintenance areas must satisfy the hot-spot test required by subsection (16)(A).
 2. In PM₁₀ nonattainment and maintenance areas the budget test must be satisfied as required by section (18) for conformity determinations made on or after—
 - A. The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;
 - B. The publication date of EPA's approval of such a budget in the *Federal Register*; or
 - C. The effective date of EPA's approval of such a budget in the *Federal Register*, if such approval is completed through direct final rulemaking.
 3. In PM₁₀ nonattainment areas the interim emissions tests must be satisfied as required by section (19) for conformity determinations made—
 - A. If there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan; or
 - B. If the submitted implementation plan revision is a demonstration of impracticability under CAA section 189(a)(1)(B)(ii) and does not demonstrate attainment.
- (H) NO₂ nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in subsection (B) of this section that are required to be satisfied at all times, in NO₂ nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:
1. In NO₂ nonattainment and maintenance areas the budget test must be satisfied as required by section (18) for conformity determinations made on or after—
 - A. The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;
 - B. The publication date of EPA's approval of such a budget in the *Federal Register*; or
 - C. The effective date of EPA's approval of such a budget in the *Federal Register*, if such approval is completed through direct final rulemaking.
 2. In NO₂ nonattainment areas the interim emissions tests must be satisfied as required by section (19) for conformity

determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

- (I) **PM_{2.5} nonattainment and maintenance areas.** In addition to the criteria listed in Table 1 in subsection (B) of this section that are required to be satisfied at all times, in PM_{2.5} nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:
1. In PM_{2.5} nonattainment and maintenance areas the budget test must be satisfied as required by section (18) for conformity determinations made on or after—
 - A. The effective date of EPA’s finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;
 - B. The publication date of EPA’s approval of such a budget in the *Federal Register*; or
 - C. The effective date of EPA’s approval of such a budget in the *Federal Register*, if such approval is completed through direct final rulemaking.
 2. In PM_{2.5} nonattainment areas the interim emissions tests must be satisfied as required by section (19) for conformity determinations made if there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.
- (J) **Areas with limited maintenance plans.** Notwithstanding the other subsections of this section, an area is not required to satisfy the regional emissions analysis for section (18) and/or section (19) for a given pollutant and NAAQS, if the area has an adequate or approved limited maintenance plan for such pollutant and NAAQS. A limited maintenance plan would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violation to occur. A conformity determination that meets other applicable criteria in Table 1 of subsection (B) of this section is still required, including the hot-spot requirements for projects in CO and PM₁₀ areas.
- (K) **Areas with insignificant motor vehicle emissions.** Notwithstanding the other subsections of this section, an area is not required to satisfy a regional emissions analysis for section (18) and/or section (19) for a given pollutant/precursor and NAAQS, if EPA finds through the adequacy or approval process that a SIP demonstrates that regional motor vehicle

emissions are an insignificant contributor to the air quality problem for that pollutant/precursor and NAAQS. The SIP would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth in that pollutant/precursor for a NAAQS violation to occur. Such a finding would be based on a number of factors, including the percentage of motor vehicle emissions in the context of the total SIP inventory, the current state of air quality as determined by monitoring data for that NAAQS, the absence of SIP motor vehicle control measures, and historical trends and future projections of the growth of motor vehicle emissions. A conformity determination that meets other applicable criteria in Table 1 of subsection (B) of this section is still required, including regional emissions analyses for section (18) and/or section (19) for other pollutants/precursors and NAAQS that apply. Hot-spot requirements for projects in CO and PM₁₀ areas in section (16) must also be satisfied, unless EPA determines that the SIP also demonstrates that projects will not create new localized violations and/or increase the severity or number of existing violations of such NAAQS. If EPA subsequently finds that motor vehicle emissions of a given pollutant/precursor are significant, this subsection would no longer apply for future conformity determinations for that pollutant/precursor and NAAQS.

(L) **Isolated rural nonattainment and maintenance areas.** This subsection applies to any nonattainment or maintenance area (or portion thereof) which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. This subsection does not apply to "donut" areas which are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary.

1. **FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of sections (10), (11), (12), (16), and (17) and subsection (13)(D).** Until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects must also satisfy the requirements of subsection (16)(B) ("Localized CO and PM₁₀ violations (hot spots)").

2. **Isolated rural nonattainment and maintenance areas are subject to the budget and/or interim emissions tests as described in subsections (C) through (K) of this section, with the following modifications—**

A. **When the requirements of sections (18) and (19) apply to isolated rural nonattainment and maintenance areas, references to "transportation plan" or "TIP" should be taken to mean those projects in the statewide**

transportation plan or statewide TIP which are in the rural nonattainment or maintenance area.

- B. In isolated rural nonattainment and maintenance areas that are subject to section (18), FHWA/FTA projects must be consistent with motor vehicle emissions budget(s) for the years in the time frame of the attainment demonstration or maintenance plan. For years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects must satisfy one (1) of the following requirements—**
- (I) Section (18);**
 - (II) Section (19) (including regional emissions analysis for NO_x in all ozone nonattainment and maintenance areas, notwithstanding paragraph (19)(F)2.; or**
 - (III) As demonstrated by the air quality dispersion model or other air quality modeling technique used in the attainment demonstration or maintenance plan, the FHWA/FTA project, in combination with all other regionally significant projects expected in the area in the time frame of the statewide transportation plan, must not cause or contribute to any new violation of any standard in any areas; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. Control measures assumed in the analysis must be enforceable.**
- C. The choice of requirements in subparagraph (L)2.B. of this section and the methodology used to meet the requirements of part (L)2.B.III. of this section must be determined through the interagency consultation process required in subparagraph (5)(C)1.G. through which the relevant recipients of Title 23 U.S.C. or Federal Transit Laws funds, the local air quality agency, the state air quality agency, and the state department of transportation should reach consensus about the option and methodology selected. EPA and DOT must be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the governor consistent with the procedure**

in subsection (5)(D), which applies for any state air agency comments on a conformity determination.

(10) Criteria and Procedures—Latest Planning Assumptions.

(A) ~~[The conformity determination, with respect to all other applicable criteria in sections (11)–(17), must be based upon the most recent planning assumptions in force at the time of the conformity determination. The conformity determination must satisfy the requirements of subsections (10)(B)–(F) of this rule.]~~**Except as provided in this paragraph, the conformity determination, with respect to all other applicable criteria in sections (11)–(19), must be based upon the most recent planning assumptions in force at the time the conformity analysis begins. The conformity determination must satisfy the requirements of subsections (10)(B)–(F) of this rule using the planning assumptions available at the time the conformity analysis begins as determined through the interagency consultation process required in section (5). The “time the conformity analysis begins” for a transportation plan or TIP determination is the point at which the MPO or other designated agency begins to model the impact of the proposed transportation plan or TIP on travel and/or emissions. New data that becomes available after an analysis begins is required to be used in the conformity determination only if a significant delay in the analysis has occurred, as determined through interagency consultation.**

(B) Assumptions must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. The conformity determination must also be based on the latest assumptions about current and future background concentrations. Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO, and shall be subject to consultation in accordance with section (5).

(C) The conformity determination for each transportation plan and TIP must discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.

(D) The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

(E) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs and other implementation plan measures which have already been implemented.

(F) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by section (5).

- (11) Criteria and Procedures—Latest Emissions Model.
- (A) The conformity determination must be based on the latest emission estimation model available. This criterion is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that state or area is used for the conformity analysis.
 - (B) EPA will consult with DOT to establish a grace period following the specification of any new model.
 - 1. The grace period will be no less than three (3) months and no more than twenty-four (24) months after notice of availability is published in the *Federal Register*.
 - 2. The length of the grace period will depend on the degree of change in the model and the scope of replanning likely to be necessary by MPOs in order to assure conformity. If the grace period will be longer than three (3) months, EPA will announce the appropriate grace period in the *Federal Register*.
 - (C) Transportation plan and TIP conformity analyses for which the emissions analysis was begun during the grace period or before the *Federal Register* notice of availability of the latest emission model may continue to use the previous version of the model. Conformity determinations for projects may also be based on the previous model if the analysis was begun during the grace period or before the *Federal Register* notice of availability, and if the final environmental document for the project is issued no more than three (3) years after the issuance of the draft environmental document.
- (12) Criteria and Procedures—Consultation. Conformity must be determined according to the consultation procedures in this rule and in the applicable implementation plan, and according to the public involvement procedures established in compliance with 23 CFR part 450. Until the implementation plan is fully approved by EPA, the conformity determination must be made according to paragraph (5)(A)2. and subsection (5)(E) and the requirements of 23 CFR part 450.
- (13) Criteria and Procedures—Timely Implementation of TCMs.
- (A) The transportation plan, TIP, or any FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.
 - (B) For transportation plans, this criterion is satisfied if the following two (2) conditions are met:
 - 1. The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under Title 23 U.S.C. or the Federal Transit Laws, consistent with schedules included in the applicable implementation plan; and

2. Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.
- (C) For TIPs, this criterion is satisfied if the following conditions are met:
1. An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs which are eligible for funding under Title 23 U.S.C. or the Federal Transit Laws, are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area.
 2. If TCMs in the applicable implementation plan have previously been programmed for federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for federal funding intended for air quality improvement projects, e.g., the Congestion Mitigation and Air Quality Improvement Program; and
 3. Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.
- (D) For FHWA/FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.
- (14) Criteria and Procedures—Currently Conforming Transportation Plan and TIP. There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.
- (A) Only one (1) conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements specified in section (4) of this rule.
 - (B) This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan, provided that all other relevant criteria of this subsection are satisfied.
- (15) Criteria and Procedures—Projects From a Plan and TIP.

- (A) The project must come from a conforming plan and program. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 of subsection (9)(B) for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of subsection (15)(B) of this rule and from a conforming program if it meets the requirements of subsection (15)(C) of this rule. Special provisions for TCMs in an applicable implementation plan are provided in subsection (15)(D) of this rule
- (B) A project is considered to be from a conforming transportation plan if one (1) of the following conditions applies:
 - 1. For projects which are required to be identified in the transportation plan in order to satisfy section (6) Content of Transportation Plans of this rule, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or
 - 2. For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.
- (C) A project is considered to be from a conforming program if the following conditions are met:
 - 1. The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions, and the project design concept and scope have not changed significantly from those which were described in the TIP; and
 - 2. If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement such measures must be obtained from the project sponsor and/or operator as required by subsection ~~[(22)]~~(25)(A) in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.
- (D) TCMs. This criterion is not required to be satisfied for TCMs specifically included in an applicable implementation plan.

(16) Criteria and Procedures—Localized CO and PM₁₀ Violations (Hot Spots).

- (A) **This subsection applies at all times. The FHWA/FTA project must not cause or contribute to any new localized CO or PM₁₀ violations or increase the frequency or severity of any existing CO or PM₁₀ violations**

in CO and PM₁₀ nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project. The demonstration must be performed according to the consultation requirements of subparagraph (5)(C)1.A. and the methodology requirements of section (23).

- (B) This subsection applies for CO nonattainment areas as described in paragraph (9)(D)1. Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criteria is satisfied with respect to existing localized CO violations if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) existing localized CO violations will be eliminated or reduced in severity and number as a result of the project. The demonstration must be performed according to the consultation requirements of subparagraph (5)(C)1.A. and the methodology requirements of section (23).

- (17) **Criteria and Procedures—Compliance with PM₁₀ and PM_{2.5} Control Measures.** The FHWA/FTA project must comply with any PM₁₀ and PM_{2.5} control measures in the applicable implementation plan. This criterion is satisfied if the project-level conformity determination contains a written commitment from the project sponsor to include in the final plans, specifications, and estimates for the project those control measures (for the purpose of limiting PM₁₀ and PM_{2.5} emissions from the construction activities and/or normal use and operation associated with the project) that are contained in the applicable implementation plan.

~~[(46)]~~(18) **Criteria and Procedures Motor Vehicle Emissions Budget.**

- (A) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies as described in subsections (9)(C) **through (L)**. This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in subsection (C) of this section are less than or equal to the motor vehicle emission budget(s) established in the applicable implementation plan or implementation plan submission.
- (B) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions budget(s), **for the attainment year (if it is within the time frame of the transportation plan)** for the last year of the transportation plan's forecast period, and for any intermediate years as necessary so that the years for

which consistency is demonstrated are no more than ten (10) years apart, as follows:

1. Until a maintenance plan is submitted—

- A. Emissions in each year (such as milestone years and the attainment year) for which the control strategy implementation plan revision establishes motor vehicle emissions budget(s) must be less than or equal to that year's motor vehicle emissions budget(s); and
- B. Emissions in years for which no motor vehicle emissions budget(s) are specifically established must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year. For example, emissions in years after the attainment year for which the implementation plan does not establish a budget must be less than or equal to the motor vehicle emissions budget(s) for the attainment year.

2. When a maintenance plan has been submitted—

- A. Emissions must be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets. If the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emissions budget(s) must be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. The interagency consultation process required by section (5) shall determine what must be considered in order to make such a finding;
- B. For years after the last year of the maintenance plan, emissions must be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan; ~~and~~
- C. If an approved **and/or submitted** control strategy implementation plan has established motor vehicle emissions budgets for years in the time frame of the transportation plan, emissions in these years must be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years[-]; **and**
- D. **For any analysis years before the last year of the maintenance plan, emissions must be less than or equal**

**to the motor vehicle emissions budget(s) established for
the most recent prior year.**

- (C) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each pollutant or pollutant precursor in subsection (2)(B) for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle emissions budget.
- (D) Consistency with the motor vehicle emissions budget(s) must be demonstrated by including emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time frame of the transportation plan.
1. Consistency with the motor vehicle emissions budget(s) must be demonstrated with a regional emissions analysis that meets the requirements of section [(20)](22) and subparagraph (5)(C)1.A.
 2. The regional emissions analysis may be performed for any years in the time frame of the transportation plan provided they are not more than ten (10) years apart and provided the analysis is performed for the attainment year (if it is in the time frame of the transportation plan) and the last year of the plan's forecast period. Emissions in years for which consistency with motor vehicle emissions budgets must be demonstrated, as required in subsection (B) of this section, may be determined by interpolating between the years for which the regional emissions analysis is performed.
- (E) Motor Vehicle Emissions Budgets in Submitted Control Strategy Implementation Plan Revisions and Submitted Maintenance Plans.
1. Consistency with the motor vehicle emissions budgets in submitted control strategy implementation plan revisions or maintenance plans must be demonstrated if EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes, ~~[or beginning forty-five (45) days after the control strategy implementation plan revision or maintenance plan has been submitted (unless EPA has declared the motor vehicle emissions budget(s) inadequate for transportation conformity purposes).~~ However, submitted implementation plans do not supercede the motor vehicle emissions budgets in approved implementation plans for the period of years addressed by the approved implementation plan.] **and the adequacy finding is effective. However, motor vehicle emissions budgets in submitted implementation plans do not supercede the motor vehicle emissions budgets in approved implementation plans for the same Clean Air Act requirement and the period of years addressed by the previously approved implementation plan, unless EPA specifies otherwise in its approval of a SIP.**

2. If EPA has **not** declared an implementation plan submission's motor vehicle emissions budget(s) ~~[inadequate]~~**adequate** for transportation conformity purposes, the ~~[inadequate]~~ budget(s) shall not be used to satisfy the requirements of this section. Consistency with the previously established motor vehicle emissions budget(s) must be demonstrated. If there are no previous approved implementation plans or implementation plan submissions with **adequate** motor vehicle emissions budgets, the **interim** emissions ~~[reduction]~~ tests required by section ~~[(17)]~~**(19)** must be satisfied.
3. If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes ~~[more than forty five (45) days after its submission to EPA]~~**after EPA had previously found the budget(s) adequate**, and conformity of a transportation plan or TIP has already been determined by DOT using the budget(s), the conformity determination will remain valid. Projects included in that transportation plan or TIP could still satisfy sections (14) and (15), which require a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.
4. EPA will not find a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan to be adequate for transportation conformity purposes unless the following minimum criteria are satisfied:
 - A. The submitted control strategy implementation plan revision or maintenance plan was endorsed by the governor (or his or her designee) and was subject to a state public hearing;
 - B. Before the control strategy implementation plan or maintenance plan was submitted to EPA, consultation among federal, state, and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns, if any, were addressed;
 - C. The motor vehicle emissions budget(s) is clearly identified and precisely quantified;
 - D. The motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission);
 - E. The motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan; and

- F. Revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see section (1) for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).
- 5. Before determining the adequacy of a submitted motor vehicle emissions budget, EPA will review the state's compilation of public comments and response to comments that are required to be submitted with any implementation plan. EPA will document its consideration of such comments and responses in a letter to the state indicating the adequacy of the submitted motor vehicle emissions budget.
- 6. When the motor vehicle emissions budget(s) used to satisfy the requirements of this section are established by an implementation plan submittal that has not yet been approved or disapproved by EPA, the MPO and DOT's conformity determinations will be deemed to be a statement that the MPO and DOT are not aware of any information that would indicate that emissions consistent with the motor vehicle emissions budget will cause or contribute to any new violation of any standard; increase the frequency or severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim emission reductions or other milestones.

(F) Adequacy review process for implementation plan submissions. EPA will use the procedure listed in paragraph (F)1. or (F)2. of this section to review the adequacy of an implementation plan submission—

- 1. When EPA reviews the adequacy of an implementation plan submission prior to EPA's final action on the implementation plan—**
 - A. EPA will notify the public through EPA's website when EPA receives an implementation plan submission that will be reviewed for adequacy;**
 - B. The public will have a minimum of thirty (30) days to comment on the adequacy of the implementation plan submission. If the complete implementation plan is not accessible electronically through the Internet and a copy is requested within fifteen (15) days of the date of the website notice, the comment period will be extended for thirty (30) days from the date that a copy of the implementation plan is mailed;**
 - C. After the public comment period closes, EPA will inform the state in writing whether EPA has found the**

submission adequate or inadequate for use in transportation conformity, including response to any comments submitted directly and review of comments submitted through the state process, or EPA will include the determination of adequacy or inadequacy in a proposed or final action approving or disapproving the implementation plan under subparagraph (F)2.C. of this section.

- D. EPA will establish a *Federal Register* notice to inform the public of EPA's finding. If EPA finds the submission adequate, the effective date of this finding will be fifteen (15) days from the date the notice is published as established in the *Federal Register* notice, unless EPA is taking a final approval action on the SIP as described in subparagraph (F)2.C. of this section.
- E. EPA will announce whether the implementation plan submission is adequate or inadequate for use in transportation conformity on EPA's website. The website will also include EPA's response to comments if any comments were received during the public comment period.
- F. If after EPA has found a submission adequate, EPA has cause to reconsider this finding, EPA will repeat actions described in subparagraphs (F)1.A. through E. or paragraph (F)2. of this section unless EPA determines that there is no need for additional public comment given the deficiencies of the implementation plan submission. In all cases where EPA reverses its previous finding to a finding of inadequacy under paragraph (F)1. of this section, such a finding will become effective immediately upon the date of EPA's letter to the state.
- G. If after EPA has found a submission inadequate, EPA has cause to reconsider the adequacy of that budget, EPA will repeat actions described in subparagraphs (F)1.A. through E. or paragraph (F)2. of this section.

2. When EPA reviews the adequacy of an implementation plan submission simultaneously with EPA's approval or disapproval of the implementation plan—

- A. EPA's *Federal Register* notice of proposed or direct final rulemaking will serve to notify the public that EPA will be reviewing the implementation plan submission for adequacy.

- B. The publication of the notice of proposed rulemaking will start a public comment period of at least thirty (30) days.
- C. EPA will indicate whether the implementation plan submission is adequate and thus can be used for conformity either in EPA's final rulemaking or through the process described in subparagraphs (F)1.C. through E. of this section. If EPA makes an adequacy finding through a final rulemaking that approves the implementation plan submission, such a finding will become effective upon the publication of EPA's approval in the *Federal Register*, or upon the effective date of EPA's approval if such action is conducted through direct final rulemaking. EPA will respond to comments received directly and review comments submitted through the state process and include the response to comments in the applicable docket.

~~[(47)]~~**(19)** Criteria and Procedures—**Interim** Emissions ~~[Reductions]~~ in Areas without Motor Vehicle Emissions Budgets.

- (A) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must ~~[contribute to emissions reductions]~~ **satisfy the interim emissions test(s) as described in subsections (9)(C) through (L).** This criterion applies ~~[as described in subsection (9)(C). It applies]~~ to the net effect of the action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation system.

- ~~[(B) This criterion may be met in moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA section 182(b)(1) and in moderate with design value greater than 12.7 ppm and serious CO nonattainment areas if a regional emissions analysis that satisfies the requirements of section (20) and subsections (E) through (H) of this section demonstrates that for each analysis year and for each of the pollutants described in subsection (D) of this section—~~

- ~~1. The emissions predicted in the "Action" scenario are less than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and~~
- ~~2. The emissions predicted in the "Action" scenario are lower than 1990 emissions by any nonzero amount.]~~

- (B) **Ozone areas. The requirements of this paragraph apply to all one (1)-hour ozone and eight (8)-hour ozone NAAQS areas, except for certain requirements as indicated. This criterion may be met—**

- 1. **In moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA**

section 182(b)(1) if a regional emissions analysis that satisfies the requirements of section (22) and subsections (G) through (J) of this section demonstrates that for each analysis year and for each of the pollutants described in subsection (F) of this section—

A. The emissions predicted in the “Action” scenario are less than the emissions predicted in the “Baseline” scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

B. The emissions predicted in the “Action” scenario are lower than—

(I) 1990 emissions by any nonzero amount, in areas for the one (1)-hour ozone NAAQS as described in subsection (9)(C); or

(II) 2002 emissions by any nonzero amount, in areas for the eight (8)-hour ozone NAAQS as described in subsections (9)(D) and (E).

2. In marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of CAA section 182(b)(1) if a regional emissions analysis that satisfies the requirements of section (22) and subsections (G) through (J) of this section demonstrates that for each analysis year and for each of the pollutants described in subsection (F) of this section—

A. The emissions predicted in the “Action” scenario are not greater than the emissions predicted in the “Baseline” scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

B. The emissions predicted in the “Action” scenario are not greater than—

(I) 1990 emissions, in areas for the one (1)-hour ozone NAAQS as described in subsection (9)(C); or

(II) 2002 emissions, in areas for the eight (8)-hour ozone NAAQS as described in subsections (9)(D) and (E).

(C) CO Areas. This criterion may be met—

1. In moderate areas with design value greater than 12.7 ppm and serious CO nonattainment areas that are subject to CAA section 187(a)(7) if a regional emissions analysis that satisfies the requirements of section (22) and subsections (G) through (J) of this section demonstrates that for each analysis year and for

each of the pollutants described in subsection (F) of this section—

- A. The emissions predicted in the “Action” scenario are less than the emissions predicted in the “Baseline” scenario, and this can be reasonably expected to be true in the periods between the analysis years; and
- B. The emissions predicted in the “Action” scenario are lower than 1990 emissions by any nonzero amount.

2. In moderate areas with design value less than 12.7 ppm and not classified CO nonattainment areas if a regional emissions analysis that satisfies the requirements of section (22) and subsections (G) through (J) of this section demonstrates that for each analysis year and for each of the pollutants described in subsection (F) of this section—

- A. The emissions predicted in the “Action” scenario are not greater than the emissions predicted in the “Baseline” scenario, and this can be reasonably expected to be true in the periods between the analysis years; or
- B. The emissions predicted in the “Action” scenario are not greater than 1990 emissions.

~~[(C)]~~(D) **PM₁₀ and NO₂ areas.** This criterion may be met in PM₁₀ and NO₂ nonattainment areas~~[- marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of CAA section 182(b)(1); and moderate with design value less than 12.7 ppm and below CO nonattainment areas if]~~ a regional emissions analysis that satisfies the requirements of section ~~[(20)]~~(22) and subsections ~~[(E)]~~(G) and ~~[(F)]~~(J) of this section demonstrates that for each analysis year and for each of the pollutants described in subsection ~~[(D)]~~(F) of this section, one (1) of the following requirements is met~~[-]~~—

- 1. The emissions predicted in the “Action” scenario are ~~[less]~~**not greater** than the emissions predicted in the “Baseline” scenario, and this can be reasonably expected to be true in the periods between the analysis years; or
- 2. The emissions predicted in the “Action” scenario are not greater than baseline emissions. Baseline emissions are those estimated to have occurred during calendar year 1990, unless a conformity plan defines the baseline emissions for a PM₁₀ area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

(E) **PM_{2.5} Areas.** This criterion may be met in PM_{2.5} nonattainment areas if a regional emissions analysis that satisfies the requirements of section (22) and subsections (G) and (J) of this section demonstrates that for

each analysis year and for each of the pollutants described in paragraph (F) of this section, one (1) of the following requirements is met—

1. The emissions predicted in the “Action” scenario are not greater than the emissions predicted in the “Baseline” scenario, and this can be reasonably expected to be true in the periods between the analysis years; or
2. The emissions predicted in the “Action” scenario are not greater than 2002 emissions.

~~[(D)]~~(F) Pollutants. The regional emissions analysis must be performed for the following pollutants:

1. VOC in ozone areas;
2. NO_x in ozone areas, unless the EPA administrator determines that additional reductions of NO_x would not contribute to attainment;
3. CO in CO areas;
4. PM₁₀ in PM₁₀ areas;
5. ~~[Transportation-related precursors of PM₁₀ in PM₁₀ nonattainment and maintenance areas]~~ **VOC and/or NO_x in PM₁₀ areas** if the EPA regional administrator or the director of the state air agency has made a finding that **one or both of** such precursor emissions from within the area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT;
[and]
6. NO_x in NO₂ areas[-];
7. **PM_{2.5} in PM_{2.5} areas; and**
8. **Re-entrained road dust in PM_{2.5} areas only if the EPA regional administrator or the director of the state air agency has made a finding that emissions from re-entrained road dust within the area are a significant contributor to the PM_{2.5} nonattainment problem and has so notified the MPO and DOT.**

~~[(E)]~~(G) Analysis Years.

1. The regional emissions analysis must be performed for analysis years that are no more than ten (10) years apart. The first analysis year must be no more than five (5) years beyond the year in which the conformity determination is being made. The last year of transportation plan's forecast period must also be an analysis year.
2. **For areas using subparagraphs (B)2.A., (C)2.A. and paragraphs (D)1., and (E)1. of this section, a regional emissions analysis that satisfies the requirements of section (22) and subsections (G) and (J) of this section would not be required for analysis years in which the transportation projects and planning assumption in the “Action” and “Baseline” scenarios are exactly the same. In such a case, subsection (A) of this section can be satisfied by documenting that the transportation projects and planning assumptions in both scenarios are exactly the same, and consequently, the emissions predicted in the “Action” scenario**

are not greater than the emissions predicted in the “Baseline” scenario for such analysis years.

~~[(F)]~~**(H)** “Baseline” Scenario. The regional emissions analysis required by subsections (B) ~~[and (C)]~~**through (E)** of this section must estimate the emissions that would result from the “Baseline” scenario in each analysis year. The “Baseline” scenario must be defined for each of the analysis years. The “Baseline” scenario is the future transportation system that will result from current programs, including the following (except that exempt projects listed in section ~~[(23)]~~**(26)** and projects exempt from regional emissions analysis as listed in section ~~[(24)]~~**(27)** need not be explicitly considered):

1. All in-place regionally significant highway and transit facilities, services and activities;
2. All ongoing travel demand management or transportation system management activities; and
3. Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first year of the previously conforming transportation plan and/or TIP; or have completed the NEPA process.

~~[(G)]~~**(I)** “Action” scenario. The regional emissions analysis required by subsections (B) ~~[and (C)]~~**through (E)** of this section must estimate the emissions that would result from the “Action” scenario in each analysis year. The “Action” scenario must be defined for each of the analysis years. The “Action” scenario is the transportation system that would result from the implementation of the proposed action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) and all other expected regionally significant projects in the nonattainment area. The “Action” scenario must include the following (except that exempt projects listed in section ~~[(23)]~~**(26)** and projects exempt from regional emissions analysis as listed section ~~[(24)]~~**(27)** need not be explicitly considered):

1. All facilities, services, and activities in the “Baseline” scenario;
2. Completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;
3. All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination;

4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination, but which have been modified since then to be more stringent or effective;
5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and
6. Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

~~[(H)]~~(J) Projects not from a conforming transportation plan and TIP. For the regional emissions analysis required by subsections (B) ~~[and (C)]~~ **through (E)** of this section, if the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the “Baseline” scenario must include the project with its original design concept and scope, and the “Action” scenario must include the project with its new design concept and scope.

~~[(18)]~~(20) Consequences of Control Strategy Implementation Plan Failures.

(A) Disapprovals.

1. If EPA disapproves any submitted control strategy implementation plan revision (with or without a protective findings), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the CAA. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined.
2. If EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, ~~[then beginning one hundred twenty (120) days after such disapproval, only projects in the first three (3) years of the currently conforming transportation plan and TIP may be found to conform. This means that beginning one hundred twenty (120) days after disapproval without a protective finding, no transportation plan, TIP, or project not in the first three (3) years of the currently conforming plan and TIP may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined. During the first one hundred twenty (120) days following EPA's disapproval~~

~~without a protective finding, transportation plan, TIP, and project conformity determinations shall be made using the motor vehicle emissions budget(s) in the disapproved control strategy implementation plan revision, unless another control strategy implementation plan revision has been submitted and its motor vehicle emissions budget(s) applies for transportation conformity purposes, pursuant to section (9).]~~ **only projects in the first three (3) years of the currently conforming transportation plan and TIP may be found to conform. This means that beginning on the effective date of disapproval without a protective finding, no transportation plan, TIP, or project not in the first three (3) years of the currently conforming transportation plan and TIP may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted, EPA finds its motor vehicle emissions budget(s) adequate pursuant to section (18) of this rule or approves the submission, and conformity to the implementation plan revision is determined.**

3. In disapproving a control strategy implementation plan revision, EPA would give a protective finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

(B) Failure to Submit and Incompleteness. In areas where EPA notifies the state, MPO, and DOT of the state's failure to submit a control strategy implementation plan or submission of an incomplete control strategy implementation plan revision, (either of which initiates the sanction process under CAA section 179 or 110(m)), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under section 179(b)(1) of the CAA, unless the failure has been remedied and acknowledged by a letter from the EPA regional administrator.

(C) Federal Implementation Plans. If the EPA promulgates a federal implementation plan that contains motor vehicle emissions budget(s) as a result of a state failure, the conformity lapse imposed by this section because of that state failure is removed.

(B) Failure to Submit and Incompleteness. In areas where EPA notifies the state, MPO, and DOT of the state's failure to submit a control strategy implementation plan or submission of an incomplete control strategy implementation plan revision, (either of which initiates the sanction process

- under CAA section 179 or 110(m)), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under section 179(b)(1) of the CAA, unless the failure has been remedied and acknowledged by a letter from the EPA regional administrator.
- (C) Federal Implementation Plans. If EPA promulgates a federal implementation plan that contains motor vehicle emissions budget(s) as a result of a state failure, the conformity lapse imposed by this section because of that state failure is removed.

~~[(49)](21) Requirements for Adoption or Approval of Projects by Other Recipients of Funds Designated under Title 23 U.S.C. or the Federal Transit Laws. [No recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:~~

~~———— (A) ——— The project was included in the first three (3) years of the most recently conforming transportation plan and TIP (or the conformity determination's regional emissions analyses), even if conformity status is currently lapsed; and the project's design concept and scope has not changed significantly from those analyses; or~~

~~———— (B) ——— There is a currently conforming transportation plan and TIP, and a new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of sections (16) and/or (17) for a project not from a conforming transportation plan and TIP).]~~

(A) Except as provided in subsection (B) of this section, no recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one (1) of the following are met:

- 1. The project comes from the currently conforming transportation plan and TIP, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis for that transportation plan and TIP;**
- 2. The project is included in the regional emissions analysis for the currently conforming transportation plan and TIP conformity determination (even if the project is not strictly included in the transportation plan or TIP for the purpose of MPO project selection or endorsement) and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis; or**
- 3. A new regional emissions analysis including the project and the currently conforming transportation plan and TIP**

demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of sections (18) and/or (19) for a project not from a conforming transportation plan and TIP).

- (B) In isolated rural nonattainment and maintenance areas subject to subsection (9)(A), no recipient of Federal funds designated under Title 23 U.S.C. or the federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one (1) of the following are met:
1. The project was included in the regional emissions analysis supporting the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly; or
 2. A new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the project was implemented (consistent with the requirements of sections (18) and/or (19) for projects not from a conforming transportation plan and TIP).
- (C) Notwithstanding subsections (A) and (B) of this section, in nonattainment and maintenance areas subject to subsections (9)(J) or (K) for a given pollutant/precursor and NAAQS, no recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one (1) of the following are met for that pollutant/precursor and NAAQS:
1. The project was included in the most recent conformity determination for the transportation plan and TIP and the project's design concept and scope has not changed significantly; or
 2. The project was included in the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly.

~~[(20)]~~(22) Procedures for Determining Regional Transportation-Related Emissions.

(A) General Requirements.

1. The regional emissions analysis required by section ~~[(16)]~~**(18)** and section ~~[(17)]~~**(19)** of this rule for the transportation plan, TIP, or project not from a conforming plan and TIP must include all regionally significant projects expected in the nonattainment or maintenance area. The analysis shall include FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by section (5) of this rule. Projects which are not regionally significant are not required to be explicitly modeled, but vehicle miles traveled (VMT) from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.
2. The emissions analysis may not include for emissions reduction credit any TCMs or other measures in the applicable implementation plan which have been delayed beyond the scheduled date(s) until such time as their implementation has been assured. If the measure has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.
3. Emissions reduction credit from projects, programs, or activities which require a regulatory action in order to be implemented may not be included in the emissions analysis unless~~[-]~~—
 - A. The regulatory action is already adopted by the enforcing jurisdiction;
 - B. The project, program, or activity is included in the applicable implementation plan;
 - C. The control strategy implementation plan submission or maintenance plan submission that establishes the motor vehicle emissions budget(s) for the purposes of section ~~[(16)]~~**(18)** contains a written commitment to the project, program, or activity by the agency with authority to implement it; or
 - D. EPA has approved an opt-in to a federally enforced program, EPA has promulgated the program (if the control program is a federal responsibility, such as tailpipe standards), or the Clean Air Act requires the program without need for individual state action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.
4. Notwithstanding paragraph ~~[(20)]~~**(22)**(A)3. of this rule, emission reduction credit from control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the

emissions analysis unless the conformity determination includes written commitments to implementation from the appropriate entities.

- A. Persons or entities voluntarily committing to control measures must comply with the obligations of such commitments.
 - B. Written commitments to mitigation measures must be obtained prior to a conformity determination, and project sponsors must comply with such commitments.
- 5. A regional emissions analysis for the purpose of satisfying the requirements of section [(47)](19) must make the same assumptions in both the “Baseline” and “Action” scenarios regarding control measures that are external to the transportation system itself, such as vehicle tailpipe or evaporative emission standards, limits on gasoline volatility, vehicle inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel.
 - 6. The ambient temperatures used for the regional emissions analysis shall be consistent with those used to establish the emissions budget in the applicable implementation plan. All other factors, for example the fraction of travel in a hot stabilized engine mode, must be consistent with the applicable implementation plan, unless modified after interagency consultation in accordance with subparagraph (5)(C)1.A. to incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.
 - 7. Reasonable methods shall be used to estimate nonattainment or maintenance area vehicle miles traveled (VMT) on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.
- (B) Regional emissions analysis in serious, severe, and extreme ozone nonattainment areas must meet the requirements of paragraphs (B)1. through 3. of this section if their metropolitan planning area contains an urbanized area population over two hundred thousand (200,000).
- 1. Beginning January 1, 1997, estimates of regional transportation-related emissions used to support conformity determinations must be made at a minimum using network-based travel models according to procedures and methods that are available and in practice and supported by current and available documentation. These procedures, methods, and practices are available from DOT and will be updated periodically. Agencies must discuss these modeling procedures and practices through the interagency consultation process, as required by subparagraph (5)(C)1.A. Network-based travel models must at a minimum satisfy the following requirements[;]—

- A. Network-based travel models must be validated against observed counts (peak and off-peak, if possible) for a base year that is not more than ten (10) years prior to the date of the conformity determination. Model forecasts must be analyzed for reasonableness and compared to historical trends and other factors, and the results must be documented;
 - B. Land use, population, employment, and other network-based travel model assumptions must be documented and based on the best available information;
 - C. Scenarios of land development and use must be consistent with the future transportation system alternatives for which emissions are being estimated. The distribution of employment and residences for different transportation options must be reasonable;
 - D. A capacity-sensitive assignment methodology must be used, and emissions estimates must be based on a methodology which differentiates between peak and off-peak link volumes and speeds and uses speeds based on final assigned volumes;
 - E. Zone-to-zone travel impedances used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times that are estimated from final assigned traffic volumes. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits; and
 - F. Network-based travel models must be reasonably sensitive to changes in the time(s), cost(s), and other factors affecting travel choices.
- 2. Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network-based travel model.
 - 3. Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled (VMT) shall be considered the primary measure of VMT within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. For areas with network-based travel models, a factor (or factors) may be developed to reconcile and calibrate the network-based travel model estimates of VMT in the base year of its validation to the HPMS estimates for the same period. These factors may then be applied to model estimates of future VMT. In this factoring process, consideration will be given to differences

between HPMS and network-based travel models, such as differences in the facility coverage of the HPMS and the modeled network description. Locally developed count-based programs and other departures from these procedures are permitted subject to the interagency consultation procedures of subparagraph (5)(C)1.A.

- (C) **Two(2)-year grace period for regional emissions analysis requirements in certain ozone and CO areas. The requirements of subsection (B) of this section apply to such areas or portions of such areas that have not previously been required to meet these requirements for any existing NAAQS two (2) years from the following:**
1. **The effective date of EPA's reclassification of an ozone or CO nonattainment area that has an urbanized area population greater than two hundred thousand (>200,000) to serious or above;**
 2. **The official notice by the Census Bureau that determines the urbanized area population of a serious or above ozone or CO nonattainment area to be greater than two hundred thousand (>200,000); or**
 3. **The effective date of EPA's action that classifies a newly designated ozone or CO nonattainment area that has an urbanized area population greater than two hundred thousand (>200,000) as serious or above.**
- ~~(C)~~(D) In all areas not otherwise subject to subsection (B) of this section, regional emissions analyses must use those procedures described in subsection (B) of this section if the use of those procedures has been the previous practice of the MPO. Otherwise, areas not subject to subsection (B) of this section may estimate regional emissions using any appropriate methods that account for VMT growth by, for example, extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for VMT per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.
- ~~(D)~~(E) **PM₁₀ from Construction-Related Fugitive Dust.**
1. For areas in which the implementation plan does not identify construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the fugitive PM₁₀ emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.
 2. In PM₁₀ nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the regional PM₁₀ emissions analysis shall consider construction-related fugitive PM₁₀ and shall account for the level of construction activity, the fugitive PM₁₀ control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.
- (F) **PM_{2.5} from construction-related fugitive dust.**

1. For PM_{2.5} areas in which the implementation plan does not identify construction-related fugitive PM_{2.5} as a significant contributor to the nonattainment problem, the fugitive PM_{2.5} emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.
2. In PM_{2.5} nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM_{2.5} as a significant contributor to the nonattainment problem, the regional PM_{2.5} emissions analysis shall consider construction-related fugitive PM_{2.5} and shall account for the level of construction activity, the fugitive PM_{2.5} control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

~~[(E)]~~(G) Reliance on Previous Regional Emissions Analysis.

1. **Conformity determinations for a new transportation plan and/or** ~~The~~ TIP may be demonstrated to satisfy the requirements of section ~~[(16)]~~(18) Motor Vehicle Emissions Budget or section ~~[(17)]~~(19) **Interim Emissions** ~~[Reductions]~~ in Areas without Motor Vehicle Emissions Budgets of this rule without new regional analysis if the **previous** regional emissions analysis ~~[already performed for the plan]~~ also applies to the **new plan and/or** TIP. This requires a demonstration that—
 - A. The **new plan and/or** TIP contains all projects which must be started in the **plan and** TIP's time frames in order to achieve the highway and transit system envisioned by the transportation plan;
 - B. All **plan and** TIP projects which are regionally significant are included in the transportation plan with design concept and scope adequate to determine their contribution to the transportation plan's **and/or TIP's** regional emissions at the time of the ~~[transportation plan's]~~**previous** conformity determination; ~~and~~
 - C. The design concept and scope of each regionally significant project in the **new plan and/or** TIP is not significantly different from that described in the **previous** transportation plan~~[-]~~; **and**
 - D. **The previous regional emissions analysis is consistent with the requirements of section (18) (including that conformity to all currently applicable budgets is demonstrated) and/or section (19), as applicable.**
2. A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of section ~~[(16)]~~(18) or section ~~[(17)]~~(19) of this rule without additional regional emissions analysis if allocating funds to the

project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan, **the previous regional emissions analysis is still consistent with the requirements of section (18) (including that conformity to all currently applicable budgets is demonstrated) and/or section (19) as applicable**, and if the project is either—

- A. Not regionally significant; or
- B. Included in the conforming transportation plan (even if it is not specifically included in the latest conforming TIP) with design concept and scope adequate to determine its contribution to the transportation plan's regional emissions at the time of the transportation plan's conformity determination, and the design concept and scope of the project is not significantly different from that described in the transportation plan.

- 3. **A conformity determination that relies on subsection (G) of this section does not satisfy the frequency requirements of subsection (4)(B) or (C).**

(23) Procedures for Determining Localized CO and PM₁₀ Concentrations (Hot-Spot Analysis).

(A) CO Hot-Spot Analysis.

- 1. **The demonstrations required by section (16) Localized CO Violations must be based on quantitative analysis using air quality models, databases, and other requirements specified in 40 CFR part 51, Appendix W Guideline on Air Quality Models. These procedures shall be used in the following cases, unless different procedures developed through the interagency consultation process required in section (5) and approved by the EPA regional administrator are used:**
 - A. **For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of violation or possible violation;**
 - B. **For projects affecting intersections that are at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to the project;**
 - C. **For any project affecting one (1) or more of the top three (3) intersections in the nonattainment or maintenance area with highest traffic volumes, as identified in the applicable implementation plan; and**
 - D. **For any project affecting one (1) or more of the top three (3) intersections in the nonattainment or**

maintenance area with the worst level-of-service, as identified in the applicable implementation plan.

- 2. In cases other than those described in paragraph (A)1. of this section, the demonstrations required by section (16) may be based on either—**
 - A. Quantitative methods that represent reasonable and common professional practice; or**
 - B. A quantitative consideration of local factors, if this can provide a clear demonstration that the requirements of section (16) are met.**

(B) General Requirements.

- 1. Estimated pollutant concentrations must be based on the total emissions burden which may result from the implementation of the project, summed together with future background concentrations. The total concentrations must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project.**
- 2. CO hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact CO concentrations have been identified. The future background concentration should be estimated by multiplying current background by the ratio of future to current traffic and the ratio of future to current emission factors.**
- 3. Hot-spot analysis assumptions must be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.**
- 4. CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor and/or operator to implement such measures, as required by subsection (25)(A).**
- 5. CO hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established “Guideline” methods. Temporary increases are defined as those which occur only during the construction phase and last five (5) years or less at any individual site.**

[(21)](24) Using the Motor Vehicle Emissions Budget in the Applicable Implementation Plan (or Implementation Plan Submission).

- (A) In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), the MPO and DOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the**

implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emission budget for conformity purposes, the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan—

1. Emissions from all sources will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;
2. Emissions from all sources will result in achieving attainment prior to the attainment deadline and/or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment; or
3. Emissions will be lower than needed to provide for continued maintenance.

~~[(B)]~~—If an applicable implementation plan submitted before November 24, 1993, demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin", the state may submit an implementation plan revision which assigns some or all of this safety margin to highway and transit motor vehicle sources for the purposes of conformity. Such an implementation plan revision, once it is endorsed by the governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.]

~~[(C)]~~(B) A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, unless the implementation plan establishes mechanisms for such trades.

~~[(D)]~~(C) If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

~~[(E)]~~(D) If a nonattainment area includes more than one MPO, the implementation plan may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.

~~[(22)]~~(25) Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures.

(A) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under Title 23 U.S.C. or the Federal Transit Laws, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM₁₀ or CO impacts. Before a conformity determination is made, written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and are included in the project design concept and scope which is used in the regional emissions analysis required by sections ~~[(46)]~~(18) Motor Vehicle Emissions Budget and ~~[(47)]~~(19) **Interim** Emissions ~~[Reductions]~~ in Areas Without Motor Vehicles Emissions Budgets **or used in the project-level hot-spot analysis required by section (16).**

(B) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(C) Written commitments to mitigation measures must be obtained prior to a conformity determination, and project sponsors must comply with such commitments.

(D) If the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the applicable emission budget requirements of section ~~[(46)]~~(18) and **interim** emissions ~~[reduction]~~ requirements of section ~~[(47)]~~(19) are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under section (5). The MPO and DOT must find that the transportation plan and TIP still satisfy the applicable requirements of sections ~~[(46)]~~(18) and/or ~~[(47)]~~(19), and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid. This finding is subject to the applicable public consultation requirements in subsection (5)(E) for conformity determination for projects.

~~[(23)]~~(26) Exempt Projects. Notwithstanding the other requirements of this rule, highway and transit projects of the types listed in Table 2 of this section are exempt from the requirement to determine conformity. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 of this section is not exempt if the MPO in consultation with other agencies (see subparagraph (5)(C)1.C.), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. The state and the MPO must ensure that exempt projects do not interfere with TCM implementation. Table 2 follows:

Table 2—Exempt Projects

Safety

Railroad/highway crossing
Hazard elimination program
Safer nonfederal-aid system roads
Shoulder improvements
Increasing sight distance
Safety improvement program
Traffic control devices and operating assistance other than signalization projects
Railroad/highway crossing warning devices
Guardrails, median barriers, crash cushions
Pavement resurfacing or rehabilitation
Pavement marking demonstration
Emergency relief (23 U.S.C. 125)
Fencing
Skid treatments
Safety roadside rest areas
Adding medians
Truck climbing lanes outside the urbanized area
Lighting improvements
Widening narrow pavements or reconstructing bridges (no additional travel lanes)
Emergency truck pullovers

Mass Transit

Operating assistance to transit agencies
Purchase of support vehicles
Rehabilitation of transit vehicles¹
Purchase of office, shop, and operating equipment for existing facilities
Purchase of operating equipment for vehicles (e.g., radios, fare boxes, lifts, etc.)
Construction or renovation of power, signal, and communications systems
Construction of small passenger shelters and information kiosks
Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures)
Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet¹
Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR part 771

Air Quality

Continuation of ride-sharing and van-pooling promotion activities at current levels

Bicycle and pedestrian facilities

Other

Specific activities which do not involve or lead directly to construction, such as—

Planning and technical studies

Grants for training and research programs

Planning activities conducted pursuant to Titles 23 and 49 U.S.C. Federal-aid systems revisions

Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action

Noise attenuation

Emergency or hardship advance land acquisitions [~~(23 CFR part 712.204(d))~~](**23 CFR 710.503**)

Acquisition of scenic easements

Plantings, landscaping, etc.

Sign removal

Directional and informational signs

Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities)

Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational, or capacity changes

¹Note—In PM₁₀ nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

[~~(24)~~](**27**) Projects Exempt From Regional Emissions Analyses. Notwithstanding the other requirements of this rule, highway and transit projects of the types listed in Table 3 of this section are exempt from regional emissions analysis requirements. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 of this section is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see subparagraph (5)(C)1.C.), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason. Table 3 follows:

Table 3—Projects Exempt from Regional Emissions Analyses

Intersection channelization projects

Intersection signalization projects at individual intersections

Interchange reconfiguration projects

Changes in vertical and horizontal alignment

Truck size and weight inspection stations

Bus terminals and transfer points

~~[(25)]~~**(28)** Traffic Signal Synchronization Projects. Traffic signal synchronization projects may be approved, funded, and implemented without satisfying the requirements of this section. However, all subsequent regional emissions analyses required by sections ~~[(16)]~~**(18)** and ~~[(17)]~~**(19)** for transportation plans, TIPs, or projects not from a conforming plan and TIP must include such regionally significant traffic signal synchronization projects.

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Oct. 4, 1994, effective May 28, 1995. Amended: Filed May 1, 1996, effective Dec. 30, 1996. Amended: Filed June 15, 1998, effective Jan. 30, 1999. Amended: Filed Feb. 14, 2003, effective Sept. 30, 2003. Amended: Filed April 1, 2005.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate .

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate .

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., June 30, 2005. The public hearing will be held at the Governor Office Building, Room 450, 200 Madison Street, Jefferson City, MO 65101. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., July 7, 2005. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176.